

# THE GENERAL STATUTES OF NORTH CAROLINA

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1987 CUMULATIVE SUPPLEMENT

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Annotated, under the Supervision of the Department of  
Justice, by the Editorial Staff of the Publishers

*Under the Direction of*

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## Volume 3B, Part I

Chapters 117 to 129

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Annotated through 356 S.E.2d 26. For complete scope of  
annotations, see scope of volume page.

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Place Behind Supplement Tab in Binder Volume.

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## Preface

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This Cumulative Supplement to Replacement Volume 3B, Part I contains the general laws of a permanent nature enacted by the General Assembly since publication of the replacement volume through the 1987 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement, and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.







# Scope of Volume

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## **Statutes:**

Permanent portions of the General Laws enacted by the General Assembly through the 1987 Regular Session affecting Chapters 117 through 129 of the General Statutes.

## **Annotations:**

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 319, p. 464.

North Carolina Court of Appeals Reports through Volume 85, p. 173.

South Eastern Reporter 2nd Series through Volume 356, p. 26.

Federal Reporter 2nd Series through Volume 817, p. 761.

Federal Supplement through Volume 658, p. 304.

Federal Rules Decisions through Volume 115, p. 78.

Bankruptcy Reports through Volume 72, p. 618.

Supreme Court Reporter through Volume 107, p. 2210.

North Carolina Law Review through Volume 65, p. 847.

Wake Forest Law Review through Volume 22, p. 424.

Campbell Law Review through Volume 9, p. 206.

Duke Law Journal through 1987, p. 190.

North Carolina Central Law Journal through Volume 16, p. 222.

Opinions of the Attorney General.

## Scope of Volume

The volume contains a selection of the most important papers presented at the International Conference on the History of the Americas, held in Mexico City, 1961. The papers are arranged in three main sections: the first section contains papers on the history of the Americas from pre-Columbian times to the present; the second section contains papers on the history of the Americas from the point of view of the different countries; and the third section contains papers on the history of the Americas from the point of view of the different peoples. The volume is a valuable contribution to the history of the Americas and is highly recommended to all those interested in the subject.

## User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included herein. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1A, Part I for the complete User's Guide.





# **The General Statutes of North Carolina 1987 Cumulative Supplement**

## **Chapter 117.**

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## **ARTICLE 2.**

### ***Electric Membership Corporations.***

#### **§ 117-12. Execution and filing of certificate of incorporation by residents of territory to be served.**

The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the corporation are to be conducted who are desirous of using electric energy to be furnished by the corporation. The certificate of incorporation shall be acknowledged by the subscribers before an officer qualified to administer oaths. When so acknowledged, the certificate may be filed in the office of the Secretary of State, who shall forthwith prepare a certified copy or copies thereof and forward one to the register of deeds in each county in which a portion of the territory of the corporation is located, who shall forthwith file such certified copy or copies in their respective offices and record the same as other certificates of incorporation are recorded. As soon as the provisions of this section have been complied with, the proposed corporation described in the certificate so filed, under its designated name, shall be and constitute a body corporate. (1935, c. 291, s. 7; 1967, c. 823, s. 32.)

**Editor's Note.** — This section has been reprinted to correct a typographical error appearing in the bound volume.



## § 117-20. Encumbrance, sale, etc., of property.

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes cast in person by at least two-thirds of its total membership, without proxies, and
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets. (1935, c. 291, s. 15; 1965, c. 287, s. 13; 1969, c. 670, s. 1; 1987, c. 448, s. 1.)

**Editor's Note.** — This section was amended by Session Laws 1987, c. 448, s. 1, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

**Effect of Amendments.** — The 1987 amendment, effective June 22, 1987, substituted "cast in person by at least two-thirds of its total membership, with-

out proxies" for "of at least a majority of its members" in subdivision (1), substituted a comma for "and" preceding "(ii)" in the final paragraph, and at the end of that paragraph added "and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

## § 117-24. Dissolution.

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of ....." (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the pres-



ident or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person by at least two-thirds of its total membership, without proxies.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years. (1935, c. 291, s. 19; 1965, c. 287, s. 14; 1987, c. 448, s. 2.)

**Effect of Amendments.** — The 1987 amendment, effective June 22, 1987, substituted "cast in person by at least two-thirds of its total membership, with-

out proxies" for "cast in person or by proxy by a majority of the members of the corporation entitled to vote" at the end of the second paragraph.

#### ARTICLE 4.

### *Telephone Service and Telephone Membership Corporations.*

#### § 117-34. Dissolution.

Any telephone membership corporation created under this Article may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed "Certificate of Dissolution of ..... " (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.
- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast

in person by at least two-thirds of its total membership, without proxies.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall pass to and become the property of the State. (1965, c. 345, s. 2; 1987, c. 448, s. 3.)

**Effect of Amendments.** — The 1987 amendment, effective June 22, 1987, substituted "cast in person by at least two-thirds of its total membership, with-

out proxies" for "cast in person or by proxy by a majority of the members of the corporation entitled to vote" at the end of the second paragraph.

## ARTICLE 6.

### *Indemnification.*

#### **§ 117-46. Indemnification of directors, officers, employees, or agents.**

The powers, authority and requirements as to indemnification, payment of expenses, and purchase of liability insurance for directors, officers, employees and agents, as set out in G.S. 55A-17.1, 55A-17.2 and G.S. 55A-17.3 shall apply to and may be exercised by any corporation formed under this Chapter. The indemnification of a director, officer, employee or agent of a corporation provided by this section shall not be deemed exclusive of any other rights to which such director, officer, employee or agent may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise with respect to any liability or litigation expenses arising out of his activities as director, officer, employee, or agent. (1987, c. 107, s. 1.)

**Editor's Note.** — Session Laws 1987, upon ratification. The act was ratified c. 107, s. 2 makes this section effective April 28, 1987.

## Chapter 118.

### Firemen's and Rescue Squad Workers' Relief and Pension Fund.

#### Article 1.

##### Fund Derived from Fire Insurance Companies.

Sec.

118-6. Trustees appointed; organization.

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##### North Carolina Firemen's and Rescue Squad Workers' Pension Fund.

118-41.2. Administrative fee for rejoining the fund.

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#### Article 5.

##### Rural Volunteer Fire Department and Rescue Squad Funds.

Sec.

118-50. Rural Volunteer Fire Department Fund.

118-51 to 118-59. [Reserved.]

#### Article 6.

##### Rescue Squad Workers' Relief Fund.

118-60. Definitions.

118-61. Rescue Squad Workers' Relief Fund; trustees; disbursement of funds.

118-62. Membership eligibility.

118-63. Accounting; reports; audits.

118-64. Justification of claim.

118-65. Application for benefits.

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## ARTICLE 1.

### *Fund Derived from Fire Insurance Companies.*

#### § 118-1. Fire insurance companies to report premiums collected.

**Editor's Note.** — Session Laws 1987, c. 584, s. 4 rewrote the heading of this Chapter.

**Local Supplemental Firemen's Retirement Fund.** — City of Burlington: 1987, c. 612; town of Elkin: 1987, c. 740, ss. 1 and 5; city of Fayetteville: 1979, c.

557, s. 8.3; 1987, c. 85; city of Greensboro: 1987, c. 178; city of Henderson: 1987, c. 173; town of North Wilkesboro: 1981, c. 287; 1987, c. 176; town of Selma: 1987, c. 614; town of Tarboro: 1987, c. 609; city of Winston-Salem: 1987, c. 508.

#### § 118-5. Disbursement of funds by Insurance Commissioner.

**Local Modification.** — Town of Tarboro: 1987, c. 609.



### § 118-6. Trustees appointed; organization.

For each county, town or city complying with and deriving benefits from the provisions of this Article, there shall be appointed a local board of trustees, known as the trustees of the firemen's relief fund, to be composed of five members, two of whom shall be elected by the members of the local fire department or departments who are qualified as beneficiaries of such fund, two of whom shall be elected by the mayor and board of aldermen or other local governing body, and one of whom shall be named by the Commissioner of Insurance. Their selection and term of office shall be as follows:

- (1) The members of the fire department shall hold an election each January to elect their representatives to above board. In January 1950, the firemen shall elect one member to serve for two years and one member to serve for one year, then each year in January thereafter, they shall elect only one member and his term of office shall be for two years.
- (2) The mayor and board of aldermen or other local governing body shall appoint, in January 1950, two representatives to above board, one to hold office for two years and one to hold office for one year, and each year in January thereafter they shall appoint only one representative and his term of office shall be for two years.
- (3) The Commissioner of Insurance shall appoint one representative to serve as trustee and he shall serve at the pleasure of the Commissioner.

All of the above trustees shall hold office for their elected or appointed time, or until their successors are elected or appointed, and shall serve without pay for their services. They shall immediately after election and appointment organize by electing from their members a chairman and a secretary and treasurer, which two last positions may be held by the same person. The treasurer of said board of trustees shall give a good and sufficient surety bond in a sum equal to the amount of moneys in his hand, to be approved by the Commissioner of Insurance. The cost of this bond may be deducted by the Insurance Commissioner from the receipts collected pursuant to G.S. 118-2 before distribution is made to local relief funds. If the chief or chiefs of the local fire departments are not named on the board of trustees as above provided, then they shall serve as ex officio members without privilege of voting on matters before the board. (1907, c. 831, s. 6; C.S., s. 6068; 1925, c. 41; 1945, c. 74, s. 1; 1947, c. 720; 1949, c. 1054; 1973, c. 1365; 1985, c. 666, s. 64; 1987, c. 174, ss. 1, 5.)

**Local Modification.** — Town of 11, 1987, rewrote the third sentence of Selma: 1987, c. 614, s. 6; town of the last paragraph, and added the fourth Tarboro: 1987, c. 609. sentence of that paragraph.

**Effect of Amendments.** —

The 1987 amendment, effective May

### § 118-7. Disbursement of funds by trustees.

The board of trustees shall have entire control of the funds derived from the provisions of this Article, and shall disburse the funds only for the following purposes:

- (1) To safeguard any fireman in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his duties as a fireman.
- (2) To provide a reasonable support for those actually dependent upon the services of any fireman who may lose his life in the fire service of his town, city, or State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.
- (2.1) To provide assistance, upon approval by the Secretary of the State Firemen's Association, to a destitute member fireman who has served honorably for at least five years.
- (3) Repealed by Session Laws 1985, c. 666, s. 61, effective July 10, 1985.
- (4) To provide for the payment of any fireman's assessment in the Firemen's Fraternal Insurance Fund of the State of North Carolina if the board of trustees finds as a fact that said fireman is unable to pay the said assessment by reason of disability.
- (5) To provide for benefits of supplemental retirement, workers compensation, and other insurance and pension protection for firemen otherwise qualifying for benefits from the Firemen's Relief Fund as set forth in Article 2 of this Chapter.
- (6) To provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the Firemen's Relief Fund as set forth in Article 2 of this Chapter.

Notwithstanding any other provisions of law, no expenditures shall be made pursuant to subsections (5) and (6) of this section unless the State Firemen's Association has certified that such expenditures will not render the Fund actuarially unsound for the purposes of providing the benefits set forth in subsections (1), (2), and (4) of this section. If, for any reason, funds made available for subsections (5) and (6) of this section shall be insufficient to pay in full any benefits, the benefits pursuant to subsections (5) and (6) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claim shall accrue with respect to any amount by which a benefit under subsections (5) and (6) shall have been reduced. (1907, c. 831, s. 6; 1919, c. 180; C.S., s. 6069; Ex. Sess. 1921, c. 55; 1923, c. 22; 1925, c. 41; 1945, c. 74, s. 2; 1985, c. 666, s. 61; 1987, c. 174, ss. 2, 3.)

**Local Modification.** — Town of Selma: 1987, c. 614, s. 2; town of Tarboro: 1987, c. 609.

**Effect of Amendments.** —

The 1987 amendment, effective May

11, 1987, added subdivision (2.1), and deleted "additional" preceding "workers compensation" in subdivision (5).

## ARTICLE 2.

*State Appropriation.***§ 118-12. Application of fund.**

The money paid into the hands of the treasurer of the North Carolina State Firemen's Association shall be known and remain as the "Firemen's Relief Fund" of North Carolina, and shall be used as a fund for the relief of firemen, members of such Association, who may be injured or rendered sick by disease contracted in the actual discharge of duty as firemen, and for the relief of widows, children, and if there be no widow or children, then dependent mothers of such firemen killed or dying from disease so contracted in such discharge of duty; to be paid in such manner and in such sums to such individuals of the classes herein named and described as may be provided for and determined upon in accordance with the constitution and bylaws of said Association, and such provisions and determinations made pursuant to said constitution and bylaws shall be final and conclusive as to the persons entitled to benefits and as to the amount of benefit to be received, and no action at law shall be maintained against said Association to enforce any claim or recover any benefit under this Article or under the constitution and bylaws of said Association; but if any officer or committee of said Association omit or refuse to perform any duty imposed upon him or them, nothing herein contained shall be construed to prevent any proceedings against said officer or committee to compel him or them to perform such duty. No fireman shall be entitled to receive any benefits under this section until the firemen's relief fund of his city or town shall have been exhausted. Notwithstanding the above provisions, the Executive Board of the North Carolina State Firemen's Association is hereby authorized to grant educational scholarships to the children of members, to subsidize premium payments of members over 65 years of age to the Firemen's Fraternal Insurance Fund of the North Carolina State Firemen's Association, and to provide accidental death and dismemberment insurance for members of those fire departments not eligible for benefits pursuant to standards of certification adopted by the State Firemen's Association for the use of local relief funds. (1891, c. 468, s. 3; Rev., s. 4393; C.S., s. 6058; 1925, c. 41; 1981 (Reg. Sess., 1982), c. 1215; 1987, c. 174, s. 4.)

**Effect of Amendments. —**

The 1987 amendment, effective May 11, 1987, substituted a comma for a semicolon and "and" preceding "to subsidize premium payments" near the mid-

dle of the last sentence, and added the language beginning "and to provide accidental death and dismemberment insurance" at the end of that sentence.



## ARTICLE 4.

*North Carolina Firemen's and Rescue Squad  
Workers' Pension Fund.***§ 118-41.2. Administrative fee for rejoining the fund.**

Any individual who had been a member of the fund and who applies to rejoin the fund shall not be entitled to membership until he or she has paid an administrative fee of twenty-five dollars (\$25.00), which fee shall be in addition to any other charges or payments required by the board of trustees to rejoin the fund based upon the fund's loss of earnings resulting from the member's withdrawal from the fund. The administrative fees collected by the fund shall be retained by the Board to defray administrative expenses, including salaries. (1987, c. 667, s. 2.)

**Editor's Note.** — Session Laws 1987, c. 667, s. 3 makes this section effective August 1, 1987.

**§ 118-43. Payments in lump sums.**

The board shall direct payment in lump sums from the fund in the following cases:

- (4) Any member withdrawing from the fund shall, upon proper application, be paid all moneys the individual contributed to the fund without accumulated earnings on the payments after the time they were made less an administrative fee equal to the lesser of the amount the individual contributed to the fund or twenty-five dollars (\$25.00). The administrative fees collected by the fund shall be retained by the Board to defray administrative expenses, including salaries. Notwithstanding the foregoing, if any person, firm, corporation, or other entity has made contributions on behalf of a member and that member withdraws from the fund, the person, firm, corporation, or other entity shall be entitled to a refund equal to the amount of contributions made by them after the Board has been notified of the contributor's desire to be refunded its contributions upon the member's withdrawal. Any refunds to a contributor other than a member shall also be subject to the twenty-five dollar (\$25.00) administrative fee. If a refund is to be shared by a member and another party the administrative fee shall be applied to each portion on a pro rata basis. (1957, c. 1420, s. 1; 1959, c. 1212, s. 1; 1977, c. 926, s. 2; 1981, c. 1029, s. 1; 1987, c. 667, s. 1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective August 1, 1987, rewrote subdivision (4).

## ARTICLE 5.

*Rural Volunteer Fire Department and Rescue Squad Funds.***§ 118-50. Rural Volunteer Fire Department Fund.**

(a) There is created the Rural Volunteer Fire Department Fund to provide matching grants to rural volunteer fire departments to purchase equipment and make capital improvements. The Fund shall be set up in the Department of Insurance. The State Treasurer shall invest its assets according to law, and the earnings shall remain in the Fund. The Fund shall be distributed under the direction of the Commissioner of Insurance. Beginning January 1, 1988, an eligible fire department may apply to the Commissioner of Insurance for a grant under this section. Beginning May 1, 1988, and on each May 1, thereafter, the Commissioner shall make grants to eligible fire departments subject to the following limitations:

- (1) The size of a grant may not exceed twenty thousand dollars (\$20,000);
- (2) The applicant shall match the grant on a dollar-for-dollar basis;
- (3) The grant may be used only for equipment purchases or capital expenditures necessary to provide fire protection services; and
- (4) An applicant may receive no more than one grant per fiscal year.

In awarding grants under this section, the Commissioner shall to the extent possible select applicants from all parts of the State based upon need. No more than one percent (1%) of the Rural Volunteer Fire Department Fund may be used to administer the program in each fiscal year.

(b) A fire department is eligible for a grant under this section if:

- (1) It serves a response area of 6,000 or less in population;
- (2) It is all volunteer; and
- (3) It has been certified by the Department of Insurance.

In making the population determination under subdivision (1), the Department shall use the latest decennial U.S. Census population data.

(c) The Commissioner of Insurance shall submit a written report to the General Assembly within 60 days after the grants have been made. This report shall contain the amount of the grant and the name of the recipient. (1987, c. 709, s. 1.)

**Editor's Note.** — Session Laws 1987, for taxable years beginning on and after c. 709, s. 3 makes this Article effective January 1, 1987.

**§§ 118-51 to 118-59:** Reserved for future codification purposes.

## ARTICLE 6.

*Rescue Squad Workers' Relief Fund.***§ 118-60. Definitions.**

As used in this Article:

- (1) "Association" means the North Carolina Association of Rescue and Emergency Medical Services, Inc.
- (2) "Board" means the Board of Trustees of the Fund.
- (3) "EMS" means emergency medical services.
- (4) "Fund" means the Rescue Squad Workers' Relief Fund.
- (5) "Secretary-Treasurer" means the Secretary-Treasurer of the Association. (1987, c. 584, s. 5.)

**Editor's Note.** — Session Laws 1987,  
c. 584, s. 6 makes this Article effective  
October 1, 1987.

**§ 118-61. Rescue Squad Workers' Relief Fund;  
trustees; disbursement of funds.**

(a) The money paid into the hands of the Commissioner of Insurance pursuant to G.S. 20-183.7(c)(3) shall be known and remain as the "Rescue Squad Workers' Relief Fund", and shall be used for the purposes set forth in this Article.

(b) The Executive Committee of the Association shall be the Board of Trustees of the Fund. The Board shall consist of the Commander, Vice-Commander, Secretary-Treasurer, and two immediate past Commanders of the Association. The Commander shall be the Chairman of the Board.

(c) The Commissioner of Insurance shall have exclusive control of the funds realized under the provisions of this Article and G.S. 20-183.7(c), and shall disburse the funds to the Association only for following purposes:

- (1) To safeguard any rescue or EMS worker in active service from financial loss, occasioned by sickness contracted or injury received while in the performance of his or her duties as a rescue or EMS worker.
- (2) To provide a reasonable support for those persons actually dependent upon the services of any rescue or EMS worker who may lose his or her life in the service of his or her town, county, city, or the State, either by accident or from disease contracted or injury received by reason of such service. The amount is to be determined according to the earning capacity of the deceased.
- (3) To award scholarships to children of members, deceased members or retired members in good standing, for the purpose of attending a four year college or university, and for the purpose of attending a two year course of study at a community college or an accredited trade or technical school, any of which is located in the State of North Carolina. Continuation of the payment of educational benefits for children of active members shall be conditioned on the



continuance of active membership in the rescue of EMS service by the parent or parents.

- (4) To pay death benefits to those persons who were actually dependent upon any member killed in the line of duty.
- (5) Notwithstanding any other provision of law, no expenditures shall be made pursuant to subdivisions (1), (2), (3), and (4) of this subsection unless the Board has certified that such expenditures will not render the Fund actuarially unsound for the purpose of providing the benefits set forth in subdivisions (1), (2), (3), and (4). If, for any reason, funds made available for subdivisions (1), (2), (3), and (4) are insufficient to pay in full any benefit, the benefits pursuant to subdivisions (1), (2), (3), and (4) shall be reduced pro rata for as long as the amount of insufficient funds exists. No claims shall accrue with respect to any amount by which a benefit under subdivisions (1), (2), (3), and (4) has been reduced. (1987, c. 584, s. 5.)

### **§ 118-62. Membership eligibility.**

(a) Any member of a rescue squad or EMS service who is eligible for membership in the Association and who has attended a minimum of 36 hours of training and meetings in the last calendar year; and each rescue squad or EMS service whose members are eligible for membership in the Association who has filed a roster certifying to the Secretary-Treasurer who certifies to the Commissioner of Insurance by January 1 of each calendar year that all eligible members have met the requirements, shall be eligible for the Fund. Any eligible member who, in the actual discharge of his or her duties as rescue or EMS personnel, is (1) made sick by disease contracted or (2) becomes disabled, shall be entitled to the benefits from the Fund.

(b) Any organized rescue squad or EMS service in North Carolina holding itself ready for duty may, upon compliance with the requirements of the constitution and by-laws of the Association, be eligible for membership in the Fund.

(c) The line of duty entitling one to participate in the Fund shall be so construed as to mean actual rescue or EMS duty only. (1987, c. 584, s. 5.)

### **§ 118-63. Accounting; reports; audits.**

The Board shall keep a correct account of all monies received and disbursed by the Board; and shall annually file a report with the Commissioner of Insurance at such time and in such form prescribed by the Commissioner of Insurance and the State Auditor. The Board shall be bonded by the sum of any money total for which it is responsible. The State Auditor shall annually conduct an audit of the Fund and the Board's administration of the Fund. (1987, c. 584, s. 5.)

**§ 118-64. Justification of claim.**

The eligibility of the claimant and the justification of each claim shall be certified by the chief or chief officer of the local department before a magistrate, notary public, or other officer authorized to administer oaths, on a form furnished by the Secretary-Treasurer. This form must be accompanied by a certificate of the attending physician on a form also to be furnished by the Secretary-Treasurer. Each person receiving benefits from the Fund shall file an annual justification of claim form with the Secretary-Treasurer stating that the need for the claim still exists. (1987, c. 584, s. 5.)

**§ 118-65. Application for benefits.**

Applications for benefits from the Fund shall be made to the Secretary-Treasurer under the following conditions and procedure: Within 30 days after the contracting of a disease or the occurrence of accident for which benefits are sought, the chief or chief officer of the local department shall notify the Secretary-Treasurer in writing that the person applying for benefits is a member of the Fund and request the necessary forms from the Secretary-Treasurer's office to be submitted for the benefits. (1987, c. 584, s. 5.)

**§ 118-66. Administration costs.**

The Association shall withhold three percent (3%) from the money received pursuant to G.S. 20-183.7(c) for the administration of the Fund. The Commissioner of Insurance shall withhold two percent (2%) from the money received pursuant to G.S. 20-183.7(c) for the administration of the Fund. (1987, c. 584, s. 5.)

## Chapter 119.

### Gasoline and Oil Inspection and Regulation.

#### Article 3.

#### Sec.

#### Gasoline and Oil Inspection.

dards; renaming, etc., of gasoline.

#### Sec.

#### 119-26. Gasoline and Oil Inspection

Board created; composition, appointment of members, etc.; expenses; powers generally; adoption of standards, etc.; sale of products not complying with stan-

#### Article 5.

#### Liquefied Petroleum Gases.

119-56. Registration of dealers; liability insurance or substitute required.

119-58. Unlawful acts.

### ARTICLE 3.

#### *Gasoline and Oil Inspection.*

#### **§ 119-26. Gasoline and Oil Inspection Board created; composition, appointment of members, etc.; expenses; powers generally; adoption of standards, etc.; sale of products not complying with standards; renaming, etc., of gasoline.**

In order to more fully carry out the provisions of this Article there is hereby created a Gasoline and Oil Inspection Board of five members, to be composed of the Commissioner of Agriculture, the Director of the Gasoline and Oil Inspection Division, and three members to be appointed by the Governor, who shall serve at his will. The Commissioner of Agriculture and the Director of the Gasoline and Oil Inspection Division shall serve without additional compensation. Other members of the Board shall each receive the amount provided by G.S. 138-5 for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his place of residence, and he shall receive five cents (5¢) a mile for the distance to and from Raleigh by the usual direct route for each meeting of the Board which he attends. These expenses shall be paid from the Gasoline and Oil Inspection Fund created by this Article. The duly appointed and acting Gasoline and Oil Inspection Board shall have the power, in its discretion, after public notice and provision for the hearing of all interested parties, to adopt standards for kerosene and one or more grades of gasoline based upon scientific tests and ratings and for each of the articles for which inspection is provided; to require the labeling of dispensing pumps or other dispensing devices, and to prescribe the forms therefor; to require that the label, name, or brand under which gasoline is thereafter to be sold be applied at the time of its first purchase within the State and to pass all rules and regulations necessary for enforcing the provisions of the laws relating to the transportation and inspection of petroleum products; provided, how-



ever, that the action of said Gasoline and Oil Inspection Board shall be subject to the approval of the Governor of the State; and provided further, that if the Gasoline and Oil Inspection Board should promulgate any regulation which requires that gasoline be labeled, named or branded at the time of its first sale in the State, that such regulation shall provide in addition that any subsequent owner may rename, rebrand, or relabel such gasoline if such subsequent owner first files with the Board a notice of intention to do so, said notice to contain information showing the original brand, name, label, the company or person from whom the gasoline has been or is to be purchased, the minimum specifications registered by the seller, the brand, name, or label that is to be given such gasoline and the minimum specifications of such gasoline as filed with the Board; provided, further, that no labeling, naming or branding of gasoline which may be required by the Gasoline and Oil Inspection Board under the provisions of this Article, shall be construed as permitting gasoline to become the subject of fair trade contracts, as provided in G.S. 66-52. After the adoption and publication of said standards it shall be unlawful to sell or offer for sale or exchange or use in this State any products which do not comply with the standards so adopted. The said Gasoline and Oil Inspection Board shall, from time to time after a public hearing, have the right to amend, alter, or change said standards. Three members of said Board shall constitute a quorum. (1937, c. 425, s. 9; 1941, c. 220; 1949, c. 1167; 1961, c. 961; 1969, c. 445, s. 2.)

**Editor's Note.** — This section has been reprinted to correct a typographical error appearing in the bound volume.

## ARTICLE 5.

### *Liquefied Petroleum Gases.*

#### **§ 119-56. Registration of dealers; liability insurance or substitute required.**

A person shall not hold himself out as a dealer without first having registered as herein provided. A dealer shall annually on or before January 1 of each year register with the Commissioner on a form to be furnished by the Commissioner. Such form shall give the name and address of the dealer, the place or places of and type or types of business [of] such dealer, and such other pertinent information as the Commissioner may deem necessary.

A dealer shall obtain and maintain comprehensive general liability insurance including product liability of one hundred thousand dollars (\$100,000) combined single limits and, when applicable, comprehensive automobile liability insurance of one hundred thousand dollars (\$100,000) combined single limits. Verification of said insurance coverage shall be made in a manner satisfactory to the Commissioner. In lieu of insurance, the dealer may file and maintain a bond, certificate of deposit or irrevocable letter of credit in a form satisfactory to the Commissioner which provides protection for the public in the same amounts and to the same extent as said insurance.

The provisions of this section shall not apply to a dealer who retails liquefied petroleum gas in containers of less than 50 pounds water capacity and which retailing does not involve the filling of such containers. (1955, c. 487; 1961, c. 1072; 1981, c. 486, s. 1; 1987, c. 453.)

**Effect of Amendments.** — The 1987 amendment, effective June 23, 1987, inserted "certificate of deposit or irrevocable letter of credit" in the last sentence of the second paragraph.

## § 119-58. Unlawful acts.

(a) It shall be an unlawful act for any person to:

- (1) Sell any gas burning appliance designed or built for domestic use which has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the Commissioner of Agriculture;
- (2) Install any unvented space heating appliance in a manufactured home as defined in G.S. 143-145(7);
- (3) Install any unvented space heating appliance in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure;
- (4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill tube or gauge; provided, said tank or container may be filled by weight if the tank or container is weighed before and after filling;
- (5) Disconnect an appliance from a gas supply line without capping or plugging said line before leaving the premises;
- (6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas outlets;
- (7) Violate any provisions of this Article or any rules and regulations promulgated thereunder.

(1955, c. 487; 1959, c. 796, s. 3; 1961, c. 1072; 1981, c. 486, s. 1; 1987, c. 282, s. 17.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective June 4, 1987, substituted "manufactured home" for "mobile home" in subdivision (a)(2).

## GENERAL ASSEMBLY

### Chapter 120. General Assembly.

#### Article 1.

##### Apportionment of Members; Compensation and Allowances.

Sec.

- 120-3. (Effective until the convening of the 1989 Regular Session)  
Pay of members and officers of the General Assembly.
- 120-3. (Effective upon the convening of the 1989 Regular Session)  
Pay of members and officers of the General Assembly.

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- 120-4.19. Contributions by the members.
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- 120-4.28. Survivor's alternate benefit.
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##### Joint Legislative Committee to Review Federal Block Grant Funds.

- 120-84.1 to 120-84.5. [Repealed.]

#### Article 14.

##### Legislative Ethics Act.

- Part 3. Legislative Ethics Committee.
- 120-103. Possible violations; procedures; disposition.

#### Article 16.

##### Legislative Appointments to Boards and Commissions.

- 120-123. Service by members of the General Assembly on certain boards and commissions.



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Sec.

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**Article 20.****Joint Legislative Commission on  
Municipal Incorporations.****Part 2. Procedure for Incorporation  
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120-175 to 120-179. [Reserved.]

**Article 21.****The North Carolina Study  
Commission on Aging.**

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- 120-180. Commission; creation.
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- 120-185. Commission; public hearings.
- 120-186. Commission; authority.
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**ARTICLE 1.***Apportionment of Members; Compensation and  
Allowances.***§ 120-1. Senators.****CASE NOTES**

**As to the vote diluting effect of a multimember electoral structure, see** *Thornburg v. Gingles*, — U.S. —, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

**§ 120-2. House apportionment specified.****CASE NOTES**

**As to the vote diluting effect of a multimember electoral structure, see** *Thornburg v. Gingles*, — U.S. —, 106 S. Ct. 2752, 92 L. Ed. 2d 25 (1986).

**§ 120-3. (Effective until the convening of the 1989  
Regular Session) Pay of members and  
officers of the General Assembly.**

(a) The Speaker of the House shall be paid an annual salary of twenty-eight thousand four hundred fifty-two dollars (\$28,452) payable monthly and an expense allowance of nine hundred twenty-nine dollars (\$929.00) per month. The President Pro Tempore of the Senate shall be paid an annual salary of seventeen thousand four hundred dollars (\$17,400) payable monthly and an expense allowance of six hundred three dollars (\$603.00) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of four-

teen thousand six hundred fifty-two dollars (\$14,652) payable monthly and an expense allowance of three hundred thirty-seven dollars (\$337.00) per month. The minority leader in the House and the majority and minority leader in the Senate shall each be paid an annual salary of twelve thousand four hundred fifty-six dollars (\$12,456) payable monthly, and an expense allowance of three hundred thirty-seven dollars (\$337.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary and expense allowances only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next regular session of the General Assembly after enactment of these increased amounts. Accordingly, upon convening of the 1987 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of ten thousand one hundred forty dollars (\$10,140) payable monthly, and an expense allowance of two hundred fifty-two dollars (\$252.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209; 1985, c. 479, s. 208; 1985 (Reg. Sess., 1986), c. 1014, s. 29.)

**Section Set Out Twice.** — The section above is effective until the convening of the 1989 Regular Session of the General Assembly. For this section as

amended effective upon the convening of the 1989 Regular Session of the General Assembly, see the following section, also numbered § 120-3.

### **§ 120-3. (Effective upon the convening of the 1989 Regular Session) Pay of members and officers of the General Assembly.**

(a) The Speaker of the House shall be paid an annual salary of twenty-nine thousand eight hundred eighty dollars (\$29,880) payable monthly, and an expense allowance of nine hundred seventy-five dollars (\$975.00) per month. The President Pro Tempore of the Senate shall be paid an annual salary of eighteen thousand two hundred seventy-six dollars (\$18,276), payable monthly, and an expense allowance of six hundred thirty-three dollars (\$633.00) per month. The Speaker Pro Tempore of the House shall be paid an annual salary of sixteen thousand eight hundred thirty-six dollars (\$16,836), payable monthly, and an expense allowance of four hundred ninety-four dollars (\$494.00) per month; and the Deputy President Pro Tempore of the Senate shall be paid an annual salary of fifteen thousand three hundred eighty-four dollars (\$15,384), payable monthly, and an expense allowance of three hundred fifty-four dollars (\$354.00) per month. The minority leader in the House and the majority and minority leaders in the Senate shall be paid an annual salary of thirteen thousand eighty dollars (\$13,080), pay-

able monthly, and an expense allowance of three hundred fifty-four dollars (\$354.00) per month.

(b) Every other member of the General Assembly shall receive increases in annual salary and expense allowances only to the extent of and in the amounts equal to the average increases received by employees of the State, effective upon convening of the next Regular Session of the General Assembly after enactment of these increased amounts. Accordingly, upon convening of the 1989 Regular Session of the General Assembly, every other member of the General Assembly shall be paid an annual salary of ten thousand six hundred forty-four dollars (\$10,644), payable monthly, and an expense allowance of two hundred sixty-five dollars (\$265.00) per month.

(c) The salary and expense allowances provided in this section are in addition to any per diem compensation and any subsistence and travel allowance authorized by any other law with respect to any regular or extra session of the General Assembly, and service on any State board, agency, commission, standing committee and study commission. (1929, c. 2, s. 1; 1951, c. 23, s. 1; 1965, c. 917; c. 1157, s. 1; 1967, c. 1120; 1969, c. 1278, s. 1; 1971, c. 1200, s. 5; 1973, c. 1482, s. 1; 1977, 2nd Sess., c. 1249, ss. 1, 2; 1979, 2nd Sess., c. 1137, s. 9.1; 1983, c. 761, s. 203; 1983 (Reg. Sess., 1984), c. 1034, s. 209; 1985, c. 479, s. 208; 1985 (Reg. Sess., 1986), c. 1014, s. 29; 1987, c. 738, s. 15; c. 830, s. 70.)

**Section Set Out Twice.** — The section above is effective upon the convening of the 1989 Regular Session of the General Assembly. For this section as in effect until the convening of the 1989 Regular Session, see the preceding section, also numbered § 120-3.

**Editor's Note.** —

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 and c. 830, s. 121 are severability clauses.

Session Laws 1987, c. 830, s. 1.1 provides that c. 830 shall be known as "The State Aid for Nonstate Agencies Act of 1987."

**Effect of Amendments.** —

The 1987 amendment by c. 738, s. 15, effective upon the convening of the 1989 Regular Session of the General Assembly, rewrote subsections (a) and (b).

The 1987 amendment by c. 830, s. 70, effective upon the convening of the 1989 Regular Session of the General Assembly, rewrote the third sentence of subsection (a).

## ARTICLE 1A.

### *Legislative Retirement System.*

#### § 120-4.8. Definitions.

The following words and phrases as used in this Article, unless the context clearly requires otherwise, have the following meanings:

- (7) "Highest annual salary" means the twelve consecutive months of compensation authorized during a member's final legislative term for the highest position that a member ever held as a member of the General Assembly.

(1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 198; 1987, c. 738, s. 31(a).)



**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** —

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

Session Laws 1987, c. 738, s. 31(a) pro-

vides: "The provisions of this subsection shall only effect [sic] benefits payable on and after September 1, 1987."

**Effect of Amendments.** — The 1987 amendment, effective July 1, 1984, rewrote subdivision (7), which formerly defined the term "highest annual salary" as the twelve consecutive months of compensation paid to a legislator which yields the highest total amount.

## § 120-4.16. Repayments and purchases.

All repayments and purchases of service credit, allowed under this Article, shall be made within two years after the member first becomes eligible to make such repayments and purchases. All such repayments and purchases not made within two years after the member becomes eligible shall equal the full actuarial cost of the additional service credit as defined in G.S. 135-4(m). (1983, c. 761, s. 238; 1987, c. 738, s. 31(b).)

**Editor's Note.** — Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments.** — The 1987

amendment, effective July 1, 1984, substituted "to make such repayments and purchases" for "for membership in the System" in the first sentence and deleted "for membership in the System" following "becomes eligible" in the second sentence.

## § 120-4.19. Contributions by the members.

Effective upon convening of the 1985 Regular Session of the General Assembly, each member shall contribute by payroll deduction for each pay period for which he receives compensation seven percent (7%) of his compensation for the period.

Anything within this Article to the contrary notwithstanding, the State, pursuant to the provisions of Section 414(h)(2) of the Internal Revenue Code of 1954 as amended, shall pick up and pay the contributions which would be payable by the members under this section with respect to the services of such members rendered after the effective date of this paragraph. The members' contributions picked up by the State shall be designated for all purposes of the Retirement System as member contributions, except for the determination of tax upon a distribution from the System. These contributions shall be credited to the Annuity Savings Fund and accumulated within the Fund in a member's account which shall be separately established for the purpose of accounting for picked-up contributions. Member contributions picked up by the State shall be payable from the same source of funds used for the payment of compensation to a member. A deduction shall be made from a member's compensation equal to the amount of his contributions picked up by the State. This deduction, however, shall not reduce a member's compensation as defined in G.S. 120-4.8(1). Picked-up contributions shall be transmitted to the Retirement System monthly for the preceding month by means of a warrant drawn by the State payable to the Retirement System and shall be accompanied by a

schedule of the picked-up contributions on such forms as may be prescribed. (1983, c. 761, s. 238; 1985, c. 400, s. 8.)

**Editor's Note.** — This version of this section, as amended by Session Laws 1985, c. 400, s. 8, became effective on November 1, 1986, following the receipt on August 18, 1986, of the favorable rul-

ing from the Internal Revenue Service that the fund is a qualified trust under Section 401(a) of the Internal Revenue Code of 1954.

## § 120-4.21. Service retirement benefits.

(a) Eligibility; Application. — Any member in service may retire with full benefits who has reached 65 years of age with five years of creditable service. Any member in service may retire with reduced benefits who has reached the age of 60 years with five years of creditable service. The member shall make written application to the Board of Trustees to retire on a service retirement allowance on the first day of the particular calendar month he designates. The designated date shall be no less than one day nor more than 90 days from the filing of the application. During this period of notification, a member may separate from service without forfeiting his retirement benefits.

(b) Computation. — Upon retirement from service in accordance with subsection (a) of this section, a member shall receive a service retirement allowance computed as follows:

- (1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four percent (4%) of his "highest annual salary," multiplied by the number of years of creditable service.
- (2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent ( $\frac{1}{4}$  of 1%) for each month his retirement date precedes his 65th birthday.

(1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 193, 194, 196; 1987, c. 513, s. 1; c. 738, ss. 31(c), (d).)

### **Editor's Note.** —

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments.** — Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more

than 90 days" for "30 nor more than 90 days" in the fourth sentence of subsection (a).

Session Laws 1987, c. 738, s. 31(c), (d), effective September 1, 1987, substituted "five years" for "eight years" in the first and second sentences of subsection (a) and in subdivisions (b)(1) and (b)(2).

### § 120-4.22. Disability retirement benefits.

(a) Eligibility; Application. — Upon application by or on behalf of the member, any member in service who has completed at least five years of creditable service and who has not reached his 60th birthday may, after medical certification, be retired on a disability retirement allowance by the Board of Trustees on the first day of the particular calendar month designated by the applicant. The designated date shall be no less than one day nor more than 90 days from the filing of the application.

(1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, ss. 195, 196; 1987, c. 513, s. 1; c. 738, s. 31(d).)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** —

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments.** — Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 nor more than 90 days" in the second sentence of subsection (a).

Session Laws 1987, c. 738, s. 31(d), effective September 1, 1987, substituted "five years" for "eight years" in subsection (a).

### § 120-4.22A. Post-retirement increases in allowances.

(c) In accordance with subsection (a) of this section, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1987, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(ii) and (jj). (1985 (Reg. Sess., 1986), c. 1014, s. 49(c); 1987, c. 738, s. 27(d).)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** —

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments.** — The 1987 amendment, effective July 1, 1987, added subsection (c).

### § 120-4.24. Return to membership of former member.

If a retired former member of the Retirement System or of the Legislative Retirement Fund returns to service as a member of the General Assembly, his retirement allowance shall cease and he shall be restored as a member of the Retirement System. The computation of the amount of benefits to which he may subsequently become entitled under this Article shall be computed as follows:

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

- (1) For a member who earns at least three years' membership service after restoration to service, the retirement allow-



ance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restrictions.

- (2) For a member who does not earn three years' membership service after restoration to service, the retirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service. (1983, c. 761, s. 238; 1987, c. 738, s. 39(a).)

**Editor's Note. —**

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments. —** The 1987 amendment, effective September 1, 1987, rewrote the second paragraph.

## § 120-4.25. Return of accumulated contributions.

If a member ceases to be a member of the General Assembly except by death or retirement, he shall, upon submission of an application, be paid not earlier than 60 days following the date of termination of service, the sum of his contributions if he has less than five years of creditable service, or the sum of his accumulated contributions if he has five or more years of creditable service, provided he has not in the meantime returned to service. Upon payment of this sum his membership in the System ceases. If he becomes a member afterwards, no credit shall be allowed for any service previously rendered except as provided in G.S. 120-4.14 and the payment shall be in full and complete discharge of any rights in or to any benefits otherwise payable under this Article. Upon receipt of proof satisfactory to the Board of Trustees of the death, prior to retirement, of a member or former member, there shall be paid to the person or persons he nominated by written designation duly acknowledged and filed with the Board of Trustees, if the person or persons are living at the time of the member's death, otherwise to the member's legal representatives, the amount of his accumulated contributions at the time of his death, unless the beneficiary elects to receive the alternate benefit under the provisions of G.S. 120-4.28. There shall be deducted from any amount otherwise payable any amount due any agency or subdivision of the State by the member by reason of any outstanding overpayment of salary or by any other reason. Even if the member fails to demand the return of his accumulated contributions within 90 days from the day he ceases to be a member of the General Assembly, any amount due the agency or subdivision by reason of any outstanding overpayment of salary or any other reason shall be paid to the agency or subdivision by the Retirement System upon demand. After the agency or subdivision has notified the executive director of any amount due. The Retirement System has no liability for amounts deducted and transmitted to the agency or subdivision nor for any failure by the Retirement System for any reason to make the deductions. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 197; 1987, c. 738, s. 31(e).)

**Editor's Note. —**

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments. —**

The 1987 amendment, effective September 1, 1987, substituted "five" for "eight" in two places in the first sentence.

### **§ 120-4.27. (Effective until July 1, 1988) Death benefit.**

The designated beneficiary of a member who dies while in service after completing one year of creditable service shall receive a lump-sum payment of an amount equal to the deceased member's highest annual salary, to a maximum of fifteen thousand dollars (\$15,000). For purposes of this death benefit "in service" means currently serving as a member of the North Carolina General Assembly.

The death benefit provided by this section shall be designated a group life insurance benefit payable under an employee welfare benefit plan that is separate and apart from the Retirement System but under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Board of Trustees is authorized to provide the death benefit in the form of group life insurance either by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in the State of North Carolina for the purpose of insuring the lives of qualified members in service, or by establishing or affiliating with a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended. (1983, c. 761, s. 238; 1985, c. 400, s. 9.)

**Section Set Out Twice. —** The section above is effective until July 1, 1988. For this section as amended effective

July 1, 1988, see the following section, also numbered § 120-4.27.

### **§ 120-4.27. (Effective July 1, 1988) Death benefit.**

The designated beneficiary of a member who dies while in service after completing one year of creditable service shall receive a lump-sum payment of an amount equal to the deceased member's highest annual salary, to a maximum of fifteen thousand dollars (\$15,000). For purposes of this death benefit "in service" means currently serving as a member of the North Carolina General Assembly.

The death benefit provided by this section shall be designated a group life insurance benefit payable under an employee welfare benefit plan that is separate and apart from the Retirement System but under which the members of the Retirement System shall participate and be eligible for group life insurance benefits. The Board of Trustees is authorized to provide the death benefit in the form of group life insurance either by purchasing a contract or contracts of group life insurance with any life insurance company or companies licensed and authorized to transact business in the State of North Carolina for the purpose of insuring the lives of qualified members in service, or by establishing or affiliating with a separate trust fund qualified under Section 501(c)(9) of the Internal Revenue Code of 1954, as amended.

Upon receipt of proof, satisfactory to the Board of Trustees, of the death of a retired member of the Retirement System or Retirement

Fund on or after July 1, 1988, there shall be paid a death benefit to the surviving spouse of a deceased retired member, or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Retirement System on a fully contributory basis, through retirement allowance deductions or other methods adopted by the Retirement System, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of twenty-four months of contributions required under this subsection. Should death occur before the completion of twenty-four months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees. (1983, c. 761, s. 238; 1985, c. 400, s. 9; 1987, c. 824, s. 1.)

**Section Set Out Twice.** — The section above is effective July 1, 1988. For this section as in effect until July 1, 1988, see the preceding section, also numbered § 120-4.27.

**Effect of Amendments.** — The 1987 amendment, effective July 1, 1988, added the last paragraph.

## § 120-4.28. Survivor's alternate benefit.

The designated beneficiary of a member who dies in service before retirement but after age 60 and after completing five years of creditable service or after completing 12 years of creditable service is entitled to Option 2 prescribed by G.S. 120-4.26. (1983, c. 761, s. 238; 1983 (Reg. Sess., 1984), c. 1034, s. 199; 1985, c. 400, s. 3; 1987, c. 738, ss. 31(d), 37(c).)

**Editor's Note.** — Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments.** — The 1987 amendment, effective September 1, 1987, substituted "five years" for "eight years" and inserted "or after completing 12 years of creditable service."

## § 120-4.30. (See editor's note for effective date) Termination or partial termination; discontinuance of contributions.

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested. (1987, c. 177, s. 1(a), (b).)



**Editor's Note.** — Session Laws 1987, c. 177, s. 1(c) makes this section effective upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service,

United States Department of Treasury, that the Retirement Systems are qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended.

## ARTICLE 5A.

### *Committee Activity.*

#### **§ 120-19.4A. Requests to State Bureau of Investigation for background investigation of a person who must be confirmed by legislative action.**

The President of the Senate or the Speaker of the House may request that the State Bureau of Investigation perform a background investigation on a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives. The person being investigated shall be given written notice by regular mail at least 10 days prior to the date that the State Bureau of Investigation is requested to perform the background investigation by the presiding officer of the body from which the request originated. There is a rebuttable presumption that the person being investigated received the notice if the presiding officer has a copy of the notice. The State Bureau of Investigation shall perform the requested background investigation and shall provide the information, including criminal records, to the presiding officer of the body from which the request originated. A copy of the information also shall be provided to the person being investigated. The term "background investigation" shall be limited to an investigation of a person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). (1987, c. 867, s. 2.)

**Editor's Note.** — Session Laws 1987, c. 867, s. 5, makes this section effective

upon ratification. The act was ratified August 14, 1987.

#### **§ 120-19.9. Local acts affecting State highway system to be considered by transportation committees.**

Any local bill affecting the State highway system shall, prior to its passage, be referred to a committee of either the House or Senate charges with the responsibility of examining bills or issues related to transportation or to the State highway system. (1987, c. 747, s. 24.)

**Editor's Note.** — Session Laws 1987, c. 747, s. 27 makes this section effective upon ratification. The act was ratified August 7, 1987.

Session Laws 1987, c. 747, s. 25 pro-

vides that as used in the act, the word "municipality" means a "city" as defined by G.S. 160A-1.

Session Laws 1987, c. 747, s. 26 is a severability clause.

## ARTICLE 6.

### *Acts and Journals.*

#### § 120-20.1. Coded bill drafting.

(a) Whenever in any act:

(1) It is stated that a law "reads as rewritten:"; and

(2) The law is set out showing material struck through or underlined, or both

the material struck through is being deleted from the existing law, and the material underlined is being added to the existing law.

(b) Notwithstanding subsection (a) of this section, underlining in a column heading is existing law, and a double underline shows a column heading being added to existing law.

(b1) In any part of a law enacted in the format provided by this section, the material deleted from existing law and the material being added to existing law are the only changes made, the setting out of material not deleted or added is for illustration only, and the fact that two different acts amend the same law, when one or more of those is in the format provided by this section, does not in itself create a conflict.

(c) As used in this section "act" and "law" also includes joint and simple resolutions.

(d) This section applies to acts ratified on or after February 9, 1987. (1987, c. 138; c. 485, s. 4.)

**Editor's Note.** — Session Laws 1987, c. 138, s. 2 makes this section effective upon ratification. The act was ratified May 5, 1987.

**Effect of Amendments.** — Session Laws 1987, c. 485, s. 4, effective June 26, 1987, added subsection (b1).

## ARTICLE 6D.

### *Local Government Fiscal Information Act.*

#### § 120-30.48. Fiscal impact of administrative actions.

(a) An agency subject to Article 2 of Chapter 150B of the General Statutes shall file a fiscal note for a proposed new rule, or a proposed amendment or repeal of an existing rule, that can affect the expenditures or revenues of a unit of local government. The fiscal note shall be filed with the Fiscal Research Division, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note shall be filed with the entities listed no later than the date specified in G.S. 150B-11.

(1979, 2nd Sess., c. 1262, s. 8; 1987, c. 827, s. 55.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, rewrote subsection (a).

## ARTICLE 8.

### *Elected Officers.*

#### § 120-37. Elected officers; salaries; staff.

(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of one hundred seventy-seven dollars (\$177.00) per week, plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only. Each principal clerk shall be entitled to other benefits available to State employees and shall be paid an annual salary of thirty-nine thousand three hundred twelve dollars (\$39,312), payable monthly.

(c) The principal clerks shall be full-time officers. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph.

(1969, c. 1184, s. 7; 1977, 2nd Sess., c. 1278; 1979, c. 838, s. 82; 1979, 2nd Sess., c. 1137, s. 8; 1981, c. 1127, s. 9; 1983, c. 761, s. 197; 1983 (Reg. Sess., 1984), c. 1034, s. 208; c. 1116, s. 110; 1985, c. 479, ss. 205, 207; c. 757, s. 189; 1985 (Reg. Sess., 1986), c. 1014, ss. 30, 31; 1987, c. 738, ss. 16, 17.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** —

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments.** —

The 1987 amendment, effective July

1, 1987, substituted "one hundred seventy-seven dollars (\$177.00)" for "one hundred sixty-eight dollars (\$168.00)" in the first sentence of subsection (b), and rewrote the second sentence of subsection (c), which read "Each principal clerk shall be paid an annual salary of thirty-seven thousand four hundred forty dollars (\$37,440), payable monthly."



## ARTICLE 12B.

*Commission on Children and Youth.***§ 120-70.7. Creation; appointment of members.**

There is created a Commission on Children and Youth with 15 members to be appointed as follows: five members by the President of the Senate, five members by the Speaker of the House of Representatives, and five by the Governor. Of the members appointed by the President of the Senate, three shall be members of the Senate at the time of their appointment, one shall be an attorney, and one shall be a parent of a child under 16. Of the members appointed by the Speaker of the House of Representatives, three shall be members of the House of Representatives at the time of their appointment, one shall be a physician licensed to practice in North Carolina and actively involved in the private practice of pediatrics, and one educator actively involved in special education. Of the five appointed by the Governor, one shall be an attorney, one shall be an educator actively involved in the education of children, one shall be a parent of a child with special needs, one shall be a physician, and one shall be a member of the public. (1987, c. 873, s. 25.1.)

**Editor's Note.** — Session Laws 1987, c. 873, s. 31 makes this Article effective July 1, 1987.

Session Laws 1987, c. 873, s. 1 pro-

vides that c. 873 shall be known as "The Study Commissions and Committees Act of 1987."

**§ 120-70.8. Time of appointments; terms of office.**

Appointments to the Commission shall be made within 15 days subsequent to the close of each regular session of the General Assembly. The term of office shall begin on the day of appointment, and shall end on the date when the next appointments are made. Terms shall be for two years. Members may be appointed for two consecutive terms and may be reappointed after being off the Commission for two years. Vacancies occurring during a term shall be filled for the unexpired term by the officer who made the original appointment. (1987, c. 873, s. 25.1.)

**§ 120-70.9. Organization of Commission.**

Upon its appointment, the Commission shall organize by electing from its membership a chairman and a vice-chairman. The Commission shall meet at such times and places as the chairman shall designate. With the approval of the Legislative Services Commission, the facilities of the State Legislative Building and the Legislative Office Building shall be available to the Commission. The Commission is authorized to conduct hearings and to contract for and employ such clerical and other assistance, professional advice and services as may be deemed necessary in the performance of its duties, with the approval of the Legislative Services Commission. (1987, c. 873, s. 25.1.)

**§ 120-70.10. Members to serve without compensation; subsistence and travel expenses.**

Members of the Commission shall serve without compensation but they shall be paid such subsistence, per diem, and travel expenses as are provided for members of State boards and commissions generally pursuant to G.S. 138-5 and G.S. 138-6. The Commission shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. (1987, c. 873, s. 25.1.)

**§ 120-70.11. Assistance to Commission.**

The Commission, in the performance of its duties, may request and shall receive from every department, board, bureau, agency, commission, or institution of this State, or from any political subdivision of the State, information, cooperation, and assistance. (1987, c. 873, s. 25.1.)

**§ 120-70.12. Duties of Commission.**

The Commission is hereby authorized to:

- (1) Pursue an in-depth study of the services provided by other states for children.
- (2) Collect and evaluate for comprehensiveness existing legislation in North Carolina that is relevant to programs for children as well as pertinent reports, studies and findings from other states, national bodies, State agencies, advocacy groups, and other interested persons.
- (3) Collect and evaluate for comprehensiveness the reports and recommendations of the various agencies, councils, commissions, committees, and associations existing in North Carolina whose primary or partial duties are to make recommendations designed to affect services for children.
- (4) Monitor on a continuing basis the progress of the State as it moves toward meeting the service requirements for children with special needs.
- (5) Recommend legislation.
- (6) Evaluate budget trends. (1987, c. 873, s. 25.1.)

**§ 120-70.13. Reports to General Assembly.**

The Commission shall make a written report to the General Assembly not later than February 1 of each odd-numbered year. This report shall include an analysis of the Commission's study, including any legislative recommendations. (1987, c. 873, s. 25.1.)

## § 120-70.14. Assistance of State Departments.

The Department of Human Resources, the Department of Public Education, the Department of Justice, and the Department of Crime Control and Public Safety are declared vital departments of State government to especially assist the Commission and to furnish it with information, and to the extent permitted by the Commission, to actively participate in the work and deliberations of the Commission. (1987, c. 873, s. 25.1.)

## ARTICLE 13A.

### *Joint Legislative Committee to Review Federal Block Grant Funds.*

§§ 120-84.1 to 120-84.5: Repealed by Session Laws 1987, c. 738, s. 120(d), effective August 7, 1987.

**Editor's Note.** — Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

## ARTICLE 14.

### *Legislative Ethics Act.*

#### Part 3. Legislative Ethics Committee.

### § 120-103. Possible violations; procedures; disposition.

(d) Disposition of Cases. — When the Committee has concluded its inquiries into alleged violations, the Committee may dispose of the matter in one or more of the following ways:

- (1) The Committee may dismiss the complaint and take no further action. In such case the Committee shall retain its records and findings in confidence unless the individual under inquiry requests in writing that the records and findings be made public.
- (2) The Committee may, if it finds substantial evidence that a criminal statute has been violated, refer the matter to the Attorney General for possible prosecution through appropriate channels.
- (3) The Committee may refer the matter to the appropriate House of the General Assembly for appropriate action. That House may, if it finds the member guilty of unethical conduct as defined in this Article, censure, suspend or expel the member. (1975, c. 564, s. 1; 1987, c. 439.)



**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987

amendment, effective June 22, 1987, inserted "or more" preceding "of the following ways" at the end of the introductory language of subsection (d).

## ARTICLE 16.

### *Legislative Appointments to Boards and Commissions.*

#### **§ 120-123. Service by members of the General Assembly on certain boards and commissions.**

No member of the General Assembly may serve on any of the following boards or commissions:

- (12) Repealed by Session Laws 1987, c. 71, s. 4, effective August 14, 1987.
- (33a) Repealed by Session Laws 1987, c. 738, s. 41(d), effective August 7, 1987.
- (34b) The North Carolina Housing Partnership, as established by G.S. 122E-4.
- (39) Repealed by Session Laws 1987, c. 71, s. 4, effective August 14, 1987.
- (51) The State Building Commission, as established by G.S. 143-135.25.
- (52) The Commission on School Facility Needs, established by G.S. 115C-489.3.
- (53) The North Carolina Marine Fisheries Commission as established by G.S. 143B-289.5.
- (54) The North Carolina Low-Level Radioactive Waste Disposal Authority, as established by G.S. 104G-5.
- (55) The North Carolina Health Insurance Trust Commission, as established by G.S. 58A-3. (1981 (Reg. Sess., 1982), c. 1191, s. 2; 1983, c. 328, s. 1.1; c. 558, s. 5; c. 559, s. 4; c. 717, ss. 2, 3, 43.2, 99, 105, 110; c. 761, s. 179; c. 778, s. 2; c. 786, s. 9; c. 789, s. 2; c. 832, s. 2; c. 871, s. 3; c. 899, s. 3; 1983 (Reg. Sess., 1984), c. 995, ss. 4, 19; 1985, c. 202, s. 5; c. 479, s. 153(b); c. 589, s. 37; c. 666, s. 80; c. 746, s. 6; c. 757, ss. 155(b), 167(h), 179(e), 206(f), 208(c); 1985 (Reg. Sess., 1986), c. 1011, ss. 2, 2.1(c); c. 1014, ss. 63(h), 99; c. 1028, s. 33; c. 1029, s. 14.3; 1987, c. 71, ss. 4, 5; c. 622, s. 15; c. 641, s. 21; c. 738, s. 41(d); c. 765, s. 2; c. 841, s. 4; c. 850, s. 18.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** —

Session Laws 1987, c. 622, s. 1, provides that the act shall be known as the "School Facilities Finance Act of 1987."

Session Laws 1987, c. 622, s. 16 provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before

its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1987, c. 738, s. 1.1, provides that the act shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 and c. 850, s. 27(b) are severability clauses.

Session Laws 1987, c. 850, s. 27(a) provides: "Notwithstanding any other provision of this act, this act shall not be construed as a revenue bill within the meaning of Section 23 of Article II of the Constitution of North Carolina. Any provision of this act contrary to this section is void."

**Effect of Amendments. —**

Session Laws 1987, c. 71, ss. 4, 5, effective April 14, 1987, deleted subdivisions (12) and (39), relating to the North Carolina Capital Building Authority, and added new subdivision (51), relating to the State Building Commission.

Session Laws 1987, c. 622, s. 15, effective July 16, 1987, added subdivision (52), relating to the Commission on School Facility Needs.

Session Laws 1987, c. 641, s. 21, effective

October 1, 1987, added subdivision (53).

Session Laws 1987, c. 738, s. 41(d), effective August 7, 1987, repealed subdivision (33a), relating to the North Carolina Board for Need-Based Student Loans.

Session Laws 1987, c. 765, s. 2, effective August 11, 1987, added subdivision (55), relating to the North Carolina Health Insurance Trust Commission.

Session Laws 1987, c. 841, s. 4, effective August 14, 1987, rewrote subdivision (34d).

Session Laws 1987, c. 850, s. 18, effective August 14, 1987, added subdivision (54), relating to the North Carolina Low-Level Radioactive Waste Disposal Authority.

## ARTICLE 18A.

### *Review of Proposals to License New Occupations and Professions.*

#### § 120-149.1. Findings and purpose.

The General Assembly finds that the number of licensed occupations and professions has substantially increased and that licensing boards have occasionally been established without a determination that the police power of the State is reasonably exercised by the establishment of such licensing boards.

The General Assembly further finds that by establishing criteria and procedures for reviewing proposed licensing boards, it will be better able to evaluate the need for new licensing boards. To this end, it is the purpose of this Article to assure that no new licensing board shall be established unless the following criteria are met:

- (1) The unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument;
- (2) The profession or occupation possesses qualities that distinguish it from ordinary labor;
- (3) Practice of the profession or occupation requires specialized skill or training;
- (4) A substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent; and
- (5) The public is not effectively protected by other means; and
- (6) Licensure will not have a substantial adverse economic impact upon consumers of the practitioner's goods or services. (1987, c. 180, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 180, s. 2 makes this Article effective upon ratification. The act was ratified May 13, 1987.

## § 120-149.2. Definitions.

As used in this Article:

- (1) "Assessment report" means a report that initially describes the need for and the fiscal impact of a new licensing board.
- (2) "Committee" means the Legislative Committee on New Licensing Boards.
- (3) "Licensing" means a regulatory system that requires persons to meet certain qualifications before they are eligible to engage in a particular occupation or profession, but does not include a regulatory system that imposes certain qualifications as a condition for using or advertising specified titles or descriptions in connection with a particular occupation or profession, unless the restrictions on the use and advertisement of said titles is so broad as to effectively prohibit the practitioner from engaging in the profession or occupation without meeting the qualifications.
- (4) "New licensing board" includes each of the following:
  - (i) A proposed new board with licensing authority over an occupation or profession; and
  - (ii) An existing board with proposed licensing authority over an occupation or profession not previously licensed by the board; provided, however, that the Committee, in reviewing a proposal to license a profession or occupation under an existing board, shall not assess the need for the continued licensing of professions and occupations already within the board's jurisdiction.
- (5) "Supplementary report" means a report that assesses the changes proposed by an amendment or committee substitute which would substantially alter a legislative proposal to create a new licensing board and for which an assessment report has already been prepared. (1987, c. 180, s. 1.)

## § 120-149.3. Assessment of new licensing boards.

(a) Any legislative proposal introduced in the General Assembly after the effective date of this act proposing (1) the establishment of a new licensing board, or (2) a study of the need to establish a new licensing board, shall not be eligible for consideration on the floor of either house (other than first reading) or before any committee of either house of the General Assembly until a final assessment report has been issued pursuant to G.S. 120-149.4(e), with a copy of the report accompanying the proposal in accordance with the rules of the appropriate house.

(b) If the proposal to establish a new licensing board is first contained in a legislative proposal, the sponsor shall present a copy of the legislative proposal to the Legislative Committee on New Licensing Boards which shall prepare an assessment report. If the proposal is not in the form of a legislative proposal, the person or organization seeking to establish a new licensing board may obtain an assessment report from the Committee only if a legislator requests such a report.

(c) If a legislative proposal receives a favorable report but is not ratified during the biennial session in which it is introduced, a new



assessment report shall be required before the same or a substantially similar legislative proposal may be considered after first reading or by any committee during a subsequent biennial session of the General Assembly. If a proposal receives a favorable report but is not introduced as a legislative proposal, the favorable report shall expire at the adjournment of the biennial session coinciding with or following issuance of the final report.

(d) A preliminary assessment report shall be prepared and returned to the sponsor or requesting legislator as soon as possible and not later than 60 days after the Committee receives the request, provided that if the volume of requests makes preparation of all such reports impossible within that time, the Committee may extend the time for preparation of any report to a maximum of 90 days from the time the request is received. The Committee shall not consider any request until it has received the information required by G.S. 120-149.4(a).

(e) If an amendment or committee substitute to a legislative proposal is introduced, the appropriate committee chairman, the presiding officer of the appropriate house, or the sponsor of the proposal may request a supplementary report when, in the opinion of any of them, the amendment or committee substitute substantially alters the legislative proposal. The supplementary report shall be prepared and returned to the requesting individual, and to the sponsor, within 30 days after the Committee receives the request.

(f) Each assessment report shall be designated as either preliminary, final, or supplementary and shall not constitute any part of the expression of legislative intent proposed by the formation of a new licensing board. An unfavorable final report shall not bar further consideration of the proposal on the floor or by any committee of either house.

(g) The Committee shall make all reports, including supplementary reports, available to all members of the General Assembly. At least one copy of all preliminary, final, and supplementary reports shall be maintained in the Legislative Library for public inspection. (1987, c. 180, s. 1.)

#### **§ 120-149.4. Procedure and criteria to be used in preparation of assessment reports.**

(a) The Legislative Committee on New Licensing Boards shall conduct an evaluation of the need for each new licensing board.

If a legislator or other person or organization is seeking to establish a new licensing board, that legislator or other person or organization shall have the burden of demonstrating to the Committee that the criteria listed in G.S. 120-149.1 are met, and furnish the Committee additional information to show:

- (1) That the unregulated practice of the occupation or profession may be hazardous to the public health, safety, or welfare;
- (2) The approximate number of people who would be regulated and the number of persons who are likely to utilize the services of the occupation or profession;
- (3) That the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;

- (4) That other states have regulatory provisions similar to the one proposed;
- (5) How the public will benefit from regulation of the occupation or profession;
- (6) How the occupation or profession will be regulated, including the qualifications and disciplinary proceedings to be applied to practitioners;
- (7) The purpose of the proposed regulation and whether there has been any public support for licensure of the profession or occupation;
- (8) That no other licensing board regulates similar or parallel activities;
- (9) That the educational requirements for licensure, if any, are fully justified; and
- (10) Any other information the Committee considers relevant to the proposed regulatory plan. The Committee shall adopt an appropriate form for use by applicants. The form shall contain a list of questions to be completed by the person or organization requesting the assessment report and a copy of this Article.

(b) In preparing an assessment report with respect to a legislative proposal to establish a new licensing board, the Committee shall consider, but shall not be limited to considering, the factors listed in subsection (a). The report shall analyze the effects of the new licensing board and shall include the Committee's recommendation on whether the General Assembly should approve the new licensing board. The Committee shall make specific findings in its report on each of the following:

- (1) Whether the unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument;
- (2) Whether the profession or occupation possesses qualities that distinguish it from ordinary labor;
- (3) Whether practice of the profession or occupation requires specialized skill or training;
- (4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence;
- (5) Whether the public can be effectively protected by other means; and
- (6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's goods or services.

(c) The Committee may also evaluate the legislative proposal itself in terms of its clarity, conciseness, conformity with existing statutes and general principles of administrative law, and specificity of the delegation of authority to promulgate rules and set fees.

(d) The Committee shall furnish a copy of the preliminary assessment report to the requesting legislator or sponsor at least seven days prior to the Committee's final meeting on the proposal, unless the sponsor or requesting legislator waives this requirement. The requesting legislator or sponsor shall have an opportunity at the final meeting to respond to the preliminary report.

(e) The Committee shall adopt a final assessment report on the proposal at the final meeting and shall issue the report within 14 days of the issuance of the preliminary report; provided that if the Committee wishes to further review or consider the sponsor's or requesting legislator's responses to the preliminary assessment report, the final report shall be issued within 21 days of the issuance of the preliminary report. If the Committee recommends against licensure, it may suggest alternative measures for regulation of the occupation or profession. (1987, c. 180, s. 1.)

### **§ 120-149.5. Hearings.**

(a) Before submitting a preliminary or final assessment report, the Committee may, in its discretion, hold one or more public hearings in the Legislative Building or Legislative Office Building.

(b) When assessment reports involving the same or similar occupations or professions are pending before the Committee, the Committee may consider any or all of the matters to be addressed by the reports. (1987, c. 180, s. 1.)

### **§ 120-149.6. Legislative Committee on New Licensing Boards.**

(a) The Legislative Committee on New Licensing Boards is created to consist of a Chairman and eight members, four Senators appointed by the President of the Senate, four members of the House of Representatives appointed by the Speaker of the House and the Chairman to be appointed as provided herein.

(b) The President of the Senate shall appoint a member of the Senate as Chairman upon the effective date of this Article who shall serve a term beginning with the effective date of this Article and expiring upon the organization of the General Assembly in 1989. Thereafter, the Speaker of the House and the President of the Senate shall alternate the appointment of the Chairman to serve during each biennial session of the General Assembly. The Chairman may vote only in the event of a tie vote. The members of the Committee shall likewise serve biennial terms. If the office of Chairman or any member shall become vacant, the vacancy shall be filled for the unexpired term by the authority making the initial appointment. Five members shall constitute a quorum of the Committee.

(c) The Committee may meet on days when the members of the General Assembly are entitled to subsistence pursuant to G.S. 120-3.1. The Committee is authorized to use the facilities of the State Legislative Building and Legislative Office Building. Clerical and professional staff shall be provided by the Legislative Services Commission. (1987, c. 180, s. 1.)



## ARTICLE 20.

*Joint Legislative Commission on Municipal Incorporations.*

## Part 2. Procedure for Incorporation Review.

§§ 120-175 to 120-179: Reserved for future codification purposes.

## ARTICLE 21.

*The North Carolina Study Commission on Aging.*

## § 120-180. Commission; creation.

The North Carolina Study Commission on Aging is created to study and evaluate the existing system of delivery of State services to older adults and to recommend an improved system of delivery to meet the present and future needs of older adults. This study shall be a continuing one and the evaluation ongoing, as the population of older citizens grows and as old problems faced by older citizens magnify and are augmented by new problems. (1987, c. 873, s. 13.1.)

**Editor's Note.** — Session Laws 1987, c. 873, s. 31 makes this Article effective July 1, 1987.

Session Laws 1987, c. 873, s. 1 pro-

vides that c. 873 shall be known as "The Study Commissions and Committees Act of 1987."

## § 120-181. Commission; duties.

The Commission shall study the issues of availability and accessibility of health, mental health, social, and other services needed by older adults. In making this study the Commission shall:

- (1) Study the needs of older adults in North Carolina;
- (2) Assess the current status of the adequacy and of the delivery of health, mental health, social, and other services to older adults;
- (3) Collect current and long range data on the older adult population and disseminate this data on an ongoing basis to agencies and organizations that are concerned with the needs of older adults;
- (4) Develop a comprehensive data base relating to older adults, which may be used to facilitate both short and long range agency planning for services for older adults and for delivery of these services;
- (5) Document and review requests of federal, State, regional, and local governments for legislation or appropriations for services for older adults, and make recommendations after review;
- (6) Evaluate long-term health care and its non-institutional alternatives;

- (7) Propose a plan for the development and delivery of State services for older adults that, if implemented, would, over 10 years, result in a comprehensive, cost-effective system of services for older adults;
- (8) Study all issues and aspects of gerontological concerns and problems, including but not limited to Alzheimer's Disease; and
- (9) Carry out any other evaluations the Commission considers necessary to perform its mandate. (1987, c. 873, s. 13.1.)

### **§ 120-182. Commission; membership.**

The Commission shall consist of 17 members, as follows:

- (1) The Secretary of the Department of Human Resources or his delegate shall serve ex officio as a non-voting member;
- (2) Eight shall be appointed by the Speaker of the House of Representatives, five being members of the House of Representatives at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults; and
- (3) Eight shall be appointed by the President of the Senate, five being members of the Senate at the time of their appointment, and at least two being planners for or providers of health, mental health, or social services to older adults.

Any vacancy shall be filled by the appointing authority who made the initial appointment and by a person having the same qualifications. All initial appointments shall be made within one calendar month from the effective date of this Article. Members' terms shall last for two years. Members may be reappointed for two consecutive terms and may be appointed again after having been off the Commission for two years. (1987, c. 873, s. 13.1.)

### **§ 120-183. Commission; meetings.**

The Commission shall have its initial meeting no later than October 1, 1987, at the call of the President of the Senate and Speaker of the House. The President of the Senate and the Speaker of the House of Representatives shall appoint a cochairman each from the membership of the Commission. The Commission shall meet upon the call of the cochairmen. (1987, c. 873, s. 13.1.)

### **§ 120-184. Commission; reimbursement.**

The Commission members shall receive no salary as a result of serving on the Commission but shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5 and G.S. 138-6, as applicable. (1987, c. 873, s. 13.1.)

**§ 120-185. Commission; public hearings.**

The Commission may hold public meetings across the State to solicit public input with respect to the issues of aging in North Carolina. (1987, c. 873, s. 13.1.)

**§ 120-186. Commission; authority.**

The Commission has the authority to obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duties, pursuant to the provisions of G.S. 120-19, as if it were a committee of the General Assembly. The Commission shall also have the authority to call witnesses, compel testimony relevant to any matter properly before the Commission, and subpoena records and documents, provided that any patient record shall have patient identifying information removed. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission as if it were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this section, the subpoena shall also be signed by the cochairmen of the Commission. Any cost of providing information to the Commission not covered by G.S. 120-19.3 may be reimbursed by the Commission from funds appropriated to it for its continuing study. (1987, c. 873, s. 13.1.)

**§ 120-187. Commission; reports.**

The Commission shall report to the General Assembly and the Governor the results of its study and recommendations. A written report shall be submitted to each biennial session of the General Assembly at its convening. (1987, c. 873, s. 13.1.)

**§ 120-188. Commission; staff; meeting place.**

The Commission may contract for clerical or professional staff or for any other services it may require in the course of its on-going study. At the request of the Commission, the Legislative Services Commission may supply members of the staff of the Legislative Services Office and clerical assistance to the Commission as the Legislative Services Commission considers appropriate.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building. (1987, c. 873, s. 13.1.)



## Chapter 121.

### Archives and History.

#### Article 1.

##### General Provisions.

Sec.

121-7. Historical museums.

#### ARTICLE 1.

##### *General Provisions.*

### § 121-7. Historical museums.

(a) The Department of Cultural Resources shall maintain and administer the North Carolina Museum of History for the collection, preservation, study, and exhibition of authentic artifacts and other historical materials relating to the history and heritage of North Carolina. The Department, with the approval of the Historical Commission, may acquire, either by purchase, gift, or loan such artifacts and materials, and, having acquired them, shall according to accepted museum practices classify, accession, preserve, and where feasible exhibit such materials and make them available for study. Within available funds, one or more branch museums of history may be established and administered by the Department. The Department of Cultural Resources, subject to the availability of staff and funds, may give financial, technical, and professional assistance to nonstate historical museums sponsored by governmental agencies and nonprofit organizations according to regulations adopted by the North Carolina Historical Commission.

(b) Insofar as practicable, the North Carolina Museum of History shall accession and maintain records showing provenance, value, location, and other pertinent information on such furniture, furnishings, decorative items, and other objects as have historical or cultural importance and which are owned by or to be acquired by the State for use in the State Capitol and the Executive Mansion, and, upon request of the Department of Administration, any other state-owned building. When any such item or object has been entered in the accession records of the Museum of History, the custodian of such item or object shall, upon its removal from the premises upon which it was located or when it is otherwise disposed of, submit to the Museum of History sufficient details concerning its removal or disposition to permit an adequate entry in the accession records to the end that its location or disposition, and authority for such change, shall be showed therein.

(c) Title to an artifact whose ownership is unknown or whose owner cannot be located passes to the Division of Archives and History if:

- (1) The artifact was placed on loan with the Division of Archives and History for a period of time exceeding five years or for an indefinite period of time or the artifact's status with the Division of Archives and History as a loan, gift, purchase, or other arrangement is unknown; and

- (2) The artifact has been a part of the inventory of the Division of Archives and History for more than five years; and
- (3) The Department of Cultural Resources makes a reasonable effort, including a diligent search of its own records to locate and inform the owner, his heirs or successors, that the Division of Archives and History is holding the artifact and clarify the artifact's status with the Division of Archives and History.

To initiate the procedure to clarify title to an artifact, the Department of Cultural Resources shall mail, first class postage prepaid, a notice to the last known address of the owner of the artifact or the last known address of the owner's heirs or successors. The Department need not mail a notice, if after exercising due diligence to find a record within the Department of Cultural Resources indicating the owner of the artifact and his latest address, that information is not available. If no claim is made within 90 days from the date that notice is mailed, the Department of Cultural Resources shall publish a notice in three papers of general circulation once a week for four consecutive weeks. If, at the end of 30 days, no claim of ownership is submitted to the Department of Cultural Resources, the Department may determine that legal title to the artifact is vested in the Division of Archives and History.

(d) Any person claiming legal title to an artifact to which the North Carolina Division of Archives and History also claims title as provided by subsection (c) may file a claim with the Department of Cultural Resources on a form prescribed by the Department. If the claimant is not the owner from whom the museum originally obtained the artifact, the claimant shall state in addition to any other information required by the Department, the facts surrounding the unavailability of the person who originally loaned or bestowed the property to the Division of Archives and History and the basis for the claim to title of the artifact. If the Department of Cultural Resources is satisfied that the claim is valid and that the claimant is the legal owner of the artifact, the Department shall return the artifact to the owner. If the Department determines that the claim is not valid and rejects the claim to the artifact, the claimant may appeal the determination as provided by Chapter 150B. (1973, c. 476, s. 48; 1979, c. 861, s. 1; 1987, c. 721, s. 1.)

**Effect of Amendments.** — The 1987 amendment, effective August 3, 1987, designated the first paragraph as subsection (a), designated the second paragraph as subsection (b), and added subsections (c) and (d).

## Chapter 122A.

### North Carolina Housing Finance Agency.

Sec.

122A-4. North Carolina Housing Finance Agency.

122A-5.8. Distressed multi-family residential rental housing provisions.

Sec.

122A-5.9. Formation of subsidiary corporations to own and operate housing projects.

### § 122A-4. North Carolina Housing Finance Agency.

(f) The Governor shall designate from among the members of the Board a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then current terms as members of the Board of Directors of the Agency. The Agency shall exercise all of its prescribed statutory powers independently of any principal State Department except as described in this Chapter. The Executive Director of the Agency shall be appointed by the Board of Directors, subject to approval by the Governor. All staff and employees of the Agency shall be appointed by the Executive Director, subject to approval by the Board of Directors; shall be eligible for participation in the State Employees' Retirement System; and shall be exempt from the provisions of the State Personnel Act. All employees other than the Executive Director shall be compensated in accordance with the salary schedules adopted pursuant to the State Personnel Act. The salary of the Executive Director shall be fixed by the General Assembly in the Current Operations Appropriations Act. The salary of the Executive Director and all staff and employees of the Agency shall not be subject to any limitations imposed pursuant to any salary schedule adopted pursuant to the terms of the State Personnel Act. The Board of Directors shall, subject to the approval of the Governor, elect and prescribe the duties of such other officers as it shall deem necessary or advisable, and the General Assembly shall fix the compensation of such officers in the Budget Appropriation Act. The books and records of the Agency shall be maintained by the Agency and shall be subject to periodic review and audit by the State.

No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the Agency shall receive no compensation for their services but shall be entitled to receive, from funds of the Agency, for attendance at meetings of the Agency or any committee thereof and for other services for the Agency reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

The Executive Director shall administer, manage and direct the affairs and business of the Agency, subject to the policies, control and direction of the members of the Agency Board of Directors. The Secretary of the Agency shall keep a record of the proceedings of the Agency and shall be custodian of all books, documents and



papers filed with the Agency, the minute book or journal of the Agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Agency and to give certificates under the official seal of the Agency to the effect that such copies are true copies, and all persons dealing with the Agency may rely upon such certificates. Seven members of the Board of Directors of the Agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the Board of Directors duly called and held shall be necessary for any action taken by the Board of Directors of the Agency, except adjournment; provided, however, that the Board of Directors may appoint an executive committee to act in behalf of said Board during the period between regular meetings of said Board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency. (1969, c. 1235, s. 4; 1973, c. 476, s. 128; c. 1262, ss. 51, 86; c. 1296, ss. 18-20; 1975, c. 19, s. 43; 1977, c. 673, s. 4; c. 771, s. 4; 1981, c. 895, s. 2; 1981 (Reg. Sess., 1982), c. 1191, s. 32; 1983, c. 148, s. 4; c. 717, ss. 36-37; 1985, c. 479, s. 222; 1987, c. 305, s. 3.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1987 amendment, effective June 8, 1987, deleted a proviso at the end of the fifth sentence of subsection (f), which

read "provided, however, that the Executive Director shall, on or before January 15 of each year, subject to the approval of the Board of Directors, designate those employees of the Agency which are employed in secretarial, clerical or administrative positions."

## § 122A-5.8. Distressed multi-family residential rental housing provisions.

(a) The General Assembly hereby finds and determines that a serious shortage of decent, safe and sanitary multi-family residential rental housing which persons and families of low and moderate income in the State can afford continues to exist; that it is in the best interests of the State to continue to promote and maintain the viability of such housing and to encourage private enterprise to sponsor, build and rehabilitate additional multi-family residential rental housing for such low and moderate income persons and families; that certain multi-family residential rental housing projects financed by the Agency are currently experiencing financial difficulties due to low occupancy levels; that measures to facilitate higher occupancy levels by extending occupancy on a temporary basis to those with incomes in excess of required low and moderate levels will help to maintain certain multi-family residential rental housing for persons and families of low and moderate income to prevent foreclosure and the use of such facilities without regard to income limitations; and that the Agency in providing such temporary assistance is promoting the health, welfare and property of all citizens of the State and is serving a public purpose for the benefit of the general public.

(b) "Distressed rental housing project" means any multi-family residential rental housing project heretofore or hereafter financed by the Agency that, as determined by resolution of the Board of

Directors of the Agency, has an occupancy level below that required for sustaining operation and as a result thereof needs to increase its occupancy levels in order to avoid foreclosure and the subsequent use of such facilities without regard to the Agency's income limitations. In determining the foregoing, the Board of Directors of the Agency shall take into consideration (1) occupancy rates of the project, (2) market conditions affecting the project, (3) costs of operation of the project, (4) debt service for the project, (5) management of the project and such other factors as the Board of Directors may deem relevant.

(c) The Board of Directors of the Agency may determine, by resolution, to permit not in excess of ten percent (10%) of the rental units in any distressed rental housing project to be rented to persons or families without regard to income until the first of the following occur (1) occupancy levels, in the judgment of the Agency, will sustain operations at a level sufficient to prevent delinquency or default, or (2) June 30, 1989.

(d) The Board of Directors may also determine, by resolution, to permit additional rental units at any such distressed rental housing project, to be rented to persons or families without regard to income, subject to the restrictions contained in subsections (c)(1) and (c)(2) of this section, provided that: (1) the units therein that have been available for rental without regard to income have been available for a period of time not less than three months, (2) the Agency has determined that permitting additional units, in excess of ten percent (10%), to be rented without regard to income is necessary in order for such distressed rental housing project to avoid foreclosure, and (3) the total number of housing units at any distressed rental housing project rented without regard to income shall not exceed fifteen percent (15%) of the total number of units therein.

(e) Once a distressed rental housing project attains sustaining occupancy at a level satisfactory to the Agency, the Agency will thereafter require the owners of such distressed rental housing project to rent only to persons and families of low and moderate income and will require that any units that were leased without regard to income limitations pursuant to the provisions of this section will next be leased, when such units become vacant, only to persons and families whose incomes fall within the then current Agency income limitations. (1987, c. 305, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 305, s. 5 makes this section effective upon ratification. The act was ratified June 8, 1987.

Section 4 of Session Laws 1987, c. 305 provides that the provisions of this section shall cease to be effective at midnight on June 30, 1989.

## § 122A-5.9. Formation of subsidiary corporations to own and operate housing projects.

(a) The Agency may acquire, by purchase or otherwise, construct, acquire, develop, own, repair, maintain, improve, rehabilitate, renovate, furnish, equip, operate, and manage residential rental housing projects to rent to persons and families of lower and moderate income.

(b) The Agency may form a nonprofit corporation or corporations under the laws of this State which may acquire, construct, develop, repair, improve, rehabilitate, renovate, furnish, equip, operate and

manage residential rental housing projects for persons and families of lower and moderate income. All of the stock of a nonprofit corporation formed by the Agency shall be owned by the Agency and its Board of Directors shall be elected or appointed by the Agency.

(c) No statutory provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to the Agency or to any nonprofit corporation formed pursuant to this section. (1987, c. 305, s. 2.)

**Editor's Note.** — Session Laws 1987, upon ratification. The act was ratified c. 305, s. 5 makes this section effective June 8, 1987.



## Chapter 122C.

# Mental Health, Mental Retardation, and Substance Abuse Act of 1985.

### Article 1.

#### General Provisions.

Sec.

122C-3. Definitions.

### Article 2.

#### Licensure of Facilities for the Mentally Ill, the Mentally Retarded, and Substance Abusers.

122C-22. Exclusions from licensure; deemed status.

122C-23. Licensure.

122C-24. Adverse action on a license.

### Article 3.

#### Clients' Rights.

122C-52. Right to confidentiality.

122C-54. Exceptions; abuse reports and court proceedings.

122C-55. Exceptions; care and treatment.

### Article 4.

#### Organization and System for Delivery of Mental Health, Mental Retardation, and Substance Abuse Services.

##### Part 2. State, County and Area Authority.

122C-112. Powers and duties of the Secretary.

122C-113. Cooperation between Secretary and other agencies.

122C-117. Powers and duties of the area authority.

122C-122. Public guardians.

122C-123. Other agency responsibility.

122C-124 to 122C-130. [Reserved.]

##### Part 4. Area Facilities.

122C-141. Provision of services.

122C-145. Appeal by area authorities.

122C-147. Allocation of funds to area authorities.

122C-151.1. Pioneer testing.

### Article 5.

#### Procedures for Admission and Discharge of Clients.

##### Part 1. General Provisions.

122C-205. Return of clients to 24-hour facilities.

Sec.

122C-205.1. Discharge of clients who escape or breach the condition of release.

122C-210.2. Research at State facilities for the mentally ill.

#### Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

122C-221. Admissions.

122C-222. Admissions to State facilities.

122C-223. Emergency admission to a 24-hour facility.

122C-224. Judicial review of voluntary admission.

122C-224.1. Duties of clerk of court.

122C-224.2. Duties of the attorney for the minor.

122C-224.3. Hearing for review of admission.

122C-224.4. Rehearings.

122C-224.5. Transportation.

122C-224.6. Treatment pending hearing and after authorization for or concurrence in admission.

122C-224.7. Discharge.

#### Part 6. Involuntary Commitment—General Provisions.

122C-251. Transportation.

#### Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders; Facilities for the Mentally Ill.

122C-262. Special emergency procedure for individuals needing immediate hospitalization.

122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.

122C-264. Duties of clerk of superior court.

122C-266. Inpatient commitment; second examination and treatment pending hearing.

122C-267. Outpatient commitment; district court hearing.

Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.	Sec.	122C-404. Community of Butner Planning Commission.
Sec.	122C-405. Procedure applicable to rules.	
122C-290. Duties for follow-up on commitment order.	122C-408. Butner Public Safety Division of the Department of Crime Control and Public Safety; jurisdiction; fire and police district.	
<b>Article 6.</b>		
<b>Special Provisions.</b>		
Part 1. Camp Butner and Community of Butner.	122C-410. Authority of county or city over Camp Butner reservation.	
122C-403. Secretary's authority over Camp Butner reservation.	122C-411. Fire protection contracts.	
	122C-412 to 122C-420. [Reserved.]	

## ARTICLE 1.

### *General Provisions.*

### § 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise the following terms have the meanings specified:

- (12a) "Developmental disability" means a severe, chronic disability of a person which:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and
  - e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated.
- (14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the mentally retarded, or substance abusers, and includes:
  - a. An "area facility", which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
  - b. A "licensable facility", which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to indi-

viduals who are mentally ill or mentally retarded, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

- c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;
- d. The psychiatric service of North Carolina Memorial Hospital;
- e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;
- f. A "State facility", which is a facility that is operated by the Secretary;
- g. A "24-hour facility", which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and
- h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the mental retarded, or substance abusers.

For the purposes of Articles 2 and 3 of this Chapter only, excluding G.S. 122C-63, "facility" also means any person at one location, whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation for individuals with developmental disabilities, developed under the authority of this Chapter.

(26) Repealed by Session Laws 1987, c. 345, s. 1, effective July 1, 1987.

(1899, c. 1, s. 28; Rev., s. 4574; C.S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4; 1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 7; 1987, c. 345, s. 1; c. 830, ss. 47(a), (b).)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Session Laws 1987, c. 830, s. 1.1 provides that c. 830 shall be known as "The State Aid for Nonstate Agencies Act of 1987."

Session Laws 1987, c. 830, s. 121 is a severability clause.

**Effect of Amendments.** —

Session Laws 1987, c. 345, s. 1, effective July 1, 1987, deleted subdivision (26), defining "Operator."

Session Laws 1987, c. 830, s. 47(a), (b),



effective October 1, 1987, added subdivision (12a) and added the last sentence of subdivision (14).

**Legal Periodicals.** — For note, "Psy-

chiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

## CASE NOTES

**Cited in** Currie v. United States, 644 F. Supp. 1074 (M.D.N.C. 1986).

## ARTICLE 2.

### *Licensure of Facilities for the Mentally Ill, the Mentally Retarded, and Substance Abusers.*

#### § 122C-22. Exclusions from licensure; deemed status.

(b) The Commission may adopt rules establishing a procedure whereby a licensable facility certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this Article by the Secretary. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary. (1983, c. 718, s. 1; 1983 (Reg. Sess., 1984), c. 1110, s. 5; 1985, c. 589, s. 2; c. 695, s. 13; 1987, c. 345, s. 2.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1987 amendment, effective July 1, 1987, rewrote the first sentence of subsection (b), which read: "If a licens-

able facility is certified by a nationally-recognized agency, such as the Joint Commission on Accreditation of Hospitals, then the Commission may by rule deem the facility licensed under this article."

#### § 122C-23. Licensure.

(b) Each license is issued to the person only for the premises named in the application and shall not be transferrable or assignable except with prior written approval of the Secretary.

(d) The Secretary shall issue a license if the Secretary finds that the person complies with this Article and the rules of the Commission and Secretary.

(1899, c. 1, s. 60; Rev., s. 4600; C.S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 813, s. 1; c. 1166, s. 7; 1965, c. 1178, ss. 1-3; 1969, c. 954; 1973, c. 476, ss. 133, 152; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1983, c. 718, ss. 1, 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 8; 1987, c. 345, ss. 3, 4.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1987 amendment, effective July 1, 1987, rewrote subsection (b), which read "Each license is issued only for the

premises named in the application and for the operator named in the application and shall not be transferable or assignable except with prior written approval of the Secretary," and in subsection (d) substituted "person" for "operator."

## § 122C-24. Adverse action on a license.

(a) The Secretary may deny, suspend, amend, or revoke a license in any case in which the Secretary finds that there has been a substantial failure to comply with any provision of this Article or other applicable statutes or any applicable rule adopted pursuant to these statutes. Action[s] under this section and appeals of those actions shall be in accordance with rules of the Commission and Chapter 150B of the General Statutes.

(1983, c. 718, s. 1; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 8-10; 1987, c. 345, s. 5.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — The word "Action" at the beginning of the second sentence of subsection (a) was apparently intended to be the word "Actions."

**Effect of Amendments.** —

The 1987 amendment, effective July

1, 1987, substituted "or other applicable statutes or any applicable rule adopted pursuant to these statutes" for "or any rule adopted pursuant to it" at the end of the first sentence of subsection (a), and substituted "Action" for "Actions" at the beginning of the second sentence of subsection (a).

## ARTICLE 3.

### *Clients' Rights.*

## § 122C-52. Right to confidentiality.

(d) No provision of G.S. 122C-205 and G.S. 122C-53 through G.S. 122C-56 permitting disclosure of confidential information may apply to the records of a client when federal statutes or regulations applicable to that client prohibit the disclosure of this information.

(1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1965, c. 800, s. 4; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1979, c. 147; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 11; 1987, c. 749, s. 2.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1987 amendment, effective October 1, 1987, inserted "G.S. 122C-205 and" in subsection (d).

**Legal Periodicals.** —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

## § 122C-53. Exceptions; client.

**Legal Periodicals.** —  
For note, "Psychiatrists' Liability to  
Third Parties for Harmful Acts Commit-

ted by Dangerous Patients," see 64  
N.C.L. Rev. 1534 (1986).

## § 122C-54. Exceptions; abuse reports and court proceedings.

(a1) Upon a determination by the facility director or his designee that disclosure is in the best interests of the client, a facility may disclose confidential information for purposes of filing a petition for involuntary commitment of a client pursuant to Article 5 of this Chapter or for purposes of filing a petition for the adjudication of incompetency of the client and the appointment of a guardian or an interim guardian under Chapter 35A of the General Statutes.

(1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1977, c. 696, s. 1; 1979, c. 147; c. 915, s. 20; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; 1987, c. 638, ss. 1, 3.1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment by c. 638, s. 1, effective July 20, 1987, added subsection (a1).

The 1987 amendment by c. 638, s. 3.1, effective October 1, 1987, substituted

"Chapter 35A" for "Chapter 33 or 35" near the end of subsection (a1).

**Legal Periodicals.** —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

## § 122C-55. Exceptions; care and treatment.

(a) Any area or State facility or the psychiatric service of North Carolina Memorial Hospital may share confidential information regarding any client of that facility with any other area or State facility or the psychiatric service of North Carolina Memorial Hospital upon a written determination by the responsible professional that such disclosure is necessary to coordinate appropriate and effective care, treatment or habilitation of the client and that failure to share this information would be detrimental to the care, treatment or habilitation of the client; provided however, confidential information may be shared without a written determination either between State facilities or between area facilities within the same catchment area.

(a1) Any State or area facility or the psychiatric service of North Carolina Memorial Hospital may share confidential information regarding any client of that facility with the Secretary, and the Secretary may share confidential information regarding any client with an area or State facility or the psychiatric service of North Carolina Memorial Hospital when the responsible professional or the Secretary determines that disclosure is necessary to coordinate appropriate and effective care, treatment or habilitation of the client and that failure to share this information would be detrimental to the care, treatment or habilitation of the client. Under the circumstances described in this subsection, the consent of the client or legally responsible person is not required for this information to be



furnished, and the information may be furnished despite objection by the client.

(1955, c. 887, s. 12; 1963, c. 1166, s. 10; 1973, c. 47, s. 2; c. 476, s. 133; c. 673, s. 5; c. 1408, s. 2; 1979, c. 147; 1983, c. 383, s. 10; c. 491; c. 638, s. 22; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 15; 1987, c. 638, ss. 2, 3.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1987 amendment, effective July 20, 1987, substituted "that such disclosure is necessary to coordinate appropriate and effective care, treatment or habilitation of the client" for "possessing the information that the sharing of information is necessary for the appropriate and effective care and treatment of

the client" and substituted "care, treatment or habilitation of the client" for "care and treatment of the client" in the first sentence of subsection (a), added the proviso at the end of that sentence, and added subsection (a1).

**Legal Periodicals.** —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

## § 122C-56. Exceptions; research and planning.

**Legal Periodicals.** —

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Committed by Dangerous Patients," see 64

N.C.L. Rev. 1534 (1986).

## ARTICLE 4.

### *Organization and System for Delivery of Mental Health, Mental Retardation, and Substance Abuse Services.*

#### Part 2. State, County and Area Authority.

## § 122C-112. Powers and duties of the Secretary.

(a) The Secretary shall:

- (1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;
- (2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;
- (3) Operate State facilities and adopt rules pertaining to their operation;
- (4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;
- (5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;
- (6) Adopt rules governing the expenditure of all area authority funds;
- (7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;

- (8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.
  - (9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;
  - (10) Promote public awareness and understanding of mental health, mental illness, mental retardation, developmental disabilities, and substance abuse;
  - (11) Administer and enforce rules that are conditions of participation in federal or State financial aid; and
  - (12) Carry out G.S. 122C-361.
- (b) The Secretary may:
- (1) Acquire by purchase or otherwise in the name of the Department equipment, supplies, and other personal property necessary to carry out the mental health, mental retardation, and substance abuse programs;
  - (2) Sponsor training opportunities in the fields of mental health, mental retardation, and substance abuse;
  - (3) Promote and conduct research in the fields of mental health, mental retardation, and substance abuse;
  - (4) Provide technical assistance for the development and improvement of prevention services;
  - (5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description which shall be used by the Secretary for the purpose of carrying out mental health, mental retardation, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;
  - (6) Accept, allocate, and spend any federal funds for mental health, mental retardation, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the State Treasurer and shall be appropriated by the General Assembly for the mental health, mental retardation, or substance abuse purposes specified;
  - (7) Enter agreements authorized by G.S. 122C-346;
  - (8) Accept, allocate, and spend funds from the United States Department of Defense to operate mental health demonstration projects for families of the uniformed services. Demonstration projects shall be operated through an area authority. The operation of these demonstration projects may be accomplished through subcontracts with one or more private sector providers. (C.S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, c. 32; c. 164; 1945, c. 952, s. 9; 1947, c. 537, ss. 5, 6; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1, 2, 3, 5; 1963, c. 451, s. 1; c. 1166, ss. 3, 6, 10; c. 1184, s. 6; 1965, c. 800, s. 1; c. 929, s. 3; 1969, c. 676, s. 2; 1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 2-4, 23; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2; 1987, c. 720, s. 2; c. 830, s. 47(c).)

**Editor's Note.** — Session Laws 1987, c. 830, s. 1.1 provides that the act shall be known as "The State Aid for Nonstate Agencies Act of 1987."

Session Laws 1987, c. 830, s. 121 is a severability clause.

**Effect of Amendments.** — Session

Laws 1987, c. 720, s. 2, effective August 1, 1987, added subdivision (b)(8).

Session Laws 1987, c. 830, s. 47(c), effective October 1, 1987, added "developmental disabilities" in subdivision (a)(10).

## § 122C-113. Cooperation between Secretary and other agencies.

(b1) The Secretary shall cooperate with the State Board of Education in coordinating the responsibilities of the Department of Human Resources and of the Department of Public Education for adolescent substance abuse programs. The Department of Human Resources, through its Division of Mental Health, Mental Retardation, and Substance Abuse Services, shall be responsible for intervention and treatment in non-school based programs. The Department of Public Education shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs.

(1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1987, c. 863, s. 1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Session Laws 1987, c. 863, s. 2 provided in part "Effective July 1, 1988, appropriations for local school units' and Department of Human Resources agencies' adolescent substance abuse program components shall be contingent upon the development of policies and procedures by the Department of Human Resources and of the De-

partment of Public Education that ensure ease of referrals between school based programs and non-school based programs such as community based intervention and treatment programs that ensure continued educational services while in treatment and that ensure re-entry to public school after non-school based treatment."

**Effect of Amendments.** — The 1987 amendment, effective August 14, 1987, added subsection (b1).

## § 122C-117. Powers and duties of the area authority.

(a) The area authority shall:

- (1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, mental retardation, developmental disability, and substance abuse services;
- (2) Provide services to clients in the catchment area;
- (3) Determine the needs of the area authority's clients and coordinate with the Secretary the provision of services to clients through area and State facilities;
- (4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
- (5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
- (6) Comply with federal requirements as a condition of receipt of federal grants; and
- (7) Appoint an area director.



(1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 3, 14, 23; 1981, c. 51, s. 3; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1987, c. 830, s. 47(d).)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Session Laws 1987, c. 830, s. 1.1 provided that the act shall be known as "The State Aid for Nonstate Agencies Act of 1987."

Session Laws 1987, c. 830, s. 121 is a severability clause.

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, added "developmental disability" in subdivision (a)(1).

## § 122C-122. Public guardians.

The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by G.S. 35A-1202(4), serve as guardians for adults adjudicated incompetent under the provisions of Subchapter I of Chapter 35A of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a proceeding brought under that Subchapter. Bond shall be required or purchased as provided by G.S. 35A-1239. (1977, c. 679, s. 7; c. 725, s. 7; 1979, c. 358, s. 26; 1985, c. 589, s. 2; 1987, c. 550, s. 26.)

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, in the first sentence substituted "G.S. 35A-1202(4)" for "G.S. 35-1.7(4)," substituted "Subchapter I of Chapter 35A" for "Article 1A of Chapter 35," deleted

"guardianship" preceding "proceeding," and substituted "that Subchapter" for "that Article," and at the end of the second sentence substituted "G.S. 35A-1239" for "G.S. 35-1.19."

## § 122C-123. Other agency responsibility.

Notwithstanding the provisions of G.S. 122C-112(a)(10) and G.S. 122C-117(a)(1), other agencies of the Department, other State agencies, and other local agencies shall continue responsibility for services they provide for persons with developmental disabilities. (1987, c. 830, s. 47(e).)

**Editor's Note.** — Session Laws 1987, c. 830, s. 1.1 provided that the act shall be known as "The State Aid for Nonstate Agencies Act of 1987."

Session Laws 1987, c. 830, s. 121 is a severability clause.

Session Laws 1987, c. 830, s. 47(e) makes this section effective October 1, 1987.

**§§ 122C-124 to 122C-130:** Reserved for future codification purposes.

## Part 4. Area Facilities.

### § 122C-141. Provision of services.

(c) The area authority may contract with a health maintenance organization, certified and operating in accordance with the provisions of Chapter 57B of the General Statutes for the area authority, to provide mental health, mental retardation, or substance abuse services to enrollees in a health care plan provided by the health maintenance organization. The terms of the contract must meet the requirements of all applicable State statutes and rules of the Commission and Secretary governing both the provision of services by an area authority and the general and fiscal operation of an area authority and the reimbursement rate for services rendered shall be based on the usual and customary charges paid by the health maintenance organization to similar providers. Any provision in conflict with a State statute or rule of the Commission or the Secretary shall be void; however, the presence of any void provision in that contract does not render void any other provision in that contract which is not in conflict with a State statute or rule of the Commission or the Secretary. Subject to approval by the Secretary and pending the timely reimbursement of the contractual charges, the area authority may expend funds for costs which may be incurred by the area authority as a result of providing the additional services under a contractual agreement with a health maintenance organization. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; c. 614, s. 7; 1985, c. 589, s. 2; 1987, c. 839.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective August 14, 1987, added subsection (c).

### § 122C-145. Appeal by area authorities.

(c) Appeals shall be conducted according to rules adopted by the Commission and Secretary and in accordance with Chapter 150B of the General Statutes. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 19; 1981, c. 51, s. 3; c. 614, s. 7; 1985, c. 589, s. 2; 1987, c. 720, s. 3.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

amendment, effective August 1, 1987, substituted "Chapter 150B" for "Chapter 150A" in subsection (c).

**Effect of Amendments.** — The 1987

### § 122C-147. Allocation of funds to area authorities.

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

- (1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a 24-hour and day facility or (ii) in contracting with a private, nonprofit corporation that operates 24-hour and

day facilities for the mentally ill, mentally retarded, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation.

- (2) Upon cessation of the use of the 24-hour and day facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the 24-hour and day facility.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal as provided by G.S. 122C-145 and Chapter 150B of the General Statutes.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation under contract with the area authority and used or to be used as a 24-hour and day facility. Prior to the use of county appropriated funds for this purpose, the area authority must obtain consent of the board or boards of commissioners of all the counties which comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property. (1973, c. 476, s. 133; c. 613; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 29; 1981, c. 51, s. 3; 1983, c. 5; c. 25; c. 402; 1985, c. 589, s. 2; 1987, c. 720, s. 3; c. 784.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** —

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

Session Laws 1987, c. 738, s. 82 makes legislative findings and appropriate funds to the Department of Human Resources and the Department of Public Education to meet the needs of the class of children identified in the case of Willie M. et al. vs. Hunt et al. The act calls for continued implementation of the prospective unit cost reimbursement system and sets out reporting requirements. The section further provides that

no state funds shall be expended on the placement and services of class members except for those funds appropriated in s. 2 of the act to the Departments of Human Resources and Public Education for programs serving that class, and except for such funds as may be elsewhere appropriated specifically for such purposes, but does not include the use of unexpended funds from prior fiscal years. In addition, this section provides that if the Department of Human Resources determines that a local program is not providing appropriate services to members of the class, the Department may ensure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

**Effect of Amendments.** — Session Laws 1987, c. 720, s. 3, effective August



1, 1987, substituted reference to Chapter 150B for reference to Chapter 150A in subsection (g).

Session Laws 1987, c. 784, effective

September 1, 1987, substituted "24-hour and day" for "residential" throughout subdivisions (b)(1) and (b)(2) and in the first sentence of subsection (j).

## § 122C-151.1. Pioneer testing.

(a) Notwithstanding G.S. 122C-147 through G.S. 122C-150, the Secretary may implement a pioneer testing program for State funding of area authorities. Such implementation shall generally be as recommended by the Mental Health Study Commission in its February 1987, report to the General Assembly. The Secretary may waive Department and Commission rules relating to accounting, budget format, program standards, and other operating rules and may adopt any necessary substitute procedures necessary for implementation of the pioneer project. Provided, however, the Secretary may not waive rules that directly relate to the health, safety, or welfare of the clients served by the pioneer sites. Substitute procedures shall not be subject to the rule making procedures in Chapter 150B of the General Statutes during the time limits of the pioneer project.

(b) The Secretary shall report to the Mental Health Study Commission on a regular basis regarding the implementation of the pioneer testing program. (1987, c. 738, s. 87(a).)

**Editor's Note.** — Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

Session Laws 1987, c. 738, s. 238 makes this section effective July 1, 1987.

## ARTICLE 5.

### *Procedures for Admission and Discharge of Clients.*

#### Part 1. General Provisions.

## § 122C-201. Declaration of policy.

### CASE NOTES

**Negligent Failure to Commit.** — For case in which federal district court adopted a "psychotherapist judgment rule" in considering alleged negligent

failure to have patient involuntarily committed, see *Currie v. United States*, 644 F. Supp. 1074 (M.D.N.C. 1986).

## § 122C-205. Return of clients to 24-hour facilities.

(a) When a client of a 24-hour facility who:

- (1) Has been involuntarily committed;
- (2) Is being detained pending a judicial hearing;
- (3) Has been voluntarily admitted but is a minor or incompetent adult;
- (4) Has been placed on conditional release from the facility; or

(5) Has been involuntarily committed or voluntarily admitted and is the subject of a detainer placed with the 24-hour facility by an appropriate official escapes or breaches a condition of his release, if applicable, the responsible professional shall notify or cause to be notified immediately the appropriate law enforcement agency in the county of residence of the client, the appropriate law enforcement agency in the county where the facility is located, and the appropriate law enforcement agency in any county where there are reasonable grounds to believe that the client may be found. The responsible professional shall determine the amount of personal identifying and background information reasonably necessary to divulge to the law enforcement agency or agencies under the particular circumstances involved in order to assure the expeditious return of the client to the 24-hour facility involved and protect the general public.

(b) When a competent adult who has been voluntarily admitted to a 24-hour facility escapes or breaches a condition of his release, the responsible professional, in the exercise of accepted professional judgment, practice, and standards, will determine if it is reasonably foreseeable that:

- (1) The client may cause physical harm to others or himself;
- (2) The client may cause damage to property;
- (3) The client may commit a felony or a violent misdemeanor;

or

(4) That the health or safety of the client may be endangered unless he is immediately returned to the facility. If the responsible professional finds that any or all of these occurrences are reasonably foreseeable, he will follow the same procedures as those set forth in subsection (a) of this section.

(c) Upon receipt of notice of an escape or breach of a condition of release as described in subsections (a) and (b) of this section, an appropriate law enforcement officer shall take the client into custody and have the client returned to the 24-hour facility from which the client has escaped or has been conditionally released. Transportation of the client back to the 24-hour facility shall be provided in the same manner as described in G.S. 122C-251 and G.S. 122C-408(b). Law enforcement agencies who are notified of a client's escape or breach of conditional release shall be notified of the client's return by the responsible 24-hour facility. Under the circumstances described in this section, the initial notification by the 24-hour facility of the client's escape or breach of conditional release shall be given by telephone communication to the appropriate law enforcement agency or agencies and, if available and appropriate, by Division of Criminal Information (DCI) message to any law enforcement agency in or out of state and by entry into the National Crime Information Center (NCIC) telecommunications system. As soon as reasonably possible following notification, written authorization to take the client into custody shall also be issued by the 24-hour facility. Under this section, law enforcement officers shall have the authority to take a client into custody upon receipt of the telephone notification or Division of Criminal Information message prior to receiving written authorization. The notification of a law enforcement agency does not, in and of itself, render this information public information within the purview of Chapter 132 of the General Statutes. However, the responsible law enforcement

agency shall determine the extent of disclosure of personal identifying and background information reasonably necessary, under the circumstances, in order to assure the expeditious return of a client to the 24-hour facility involved and to protect the general public and is authorized to make such disclosure. The responsible law enforcement agency may also place any appropriate message or entry into either the Division of Criminal Information System or National Crime Information System, or both, as appropriate.

(d) In the situations described in subsections (a) and (b) of this section, the responsible professional shall also notify or cause to be notified as soon as practicable:

- (1) The next of kin of the client or legally responsible person for the client;
- (2) The clerk of superior court of the county of commitment of the client;
- (3) The area authority of the county of residence of the client, if appropriate;
- (4) The physician or eligible psychologist who performed the first examination for a commitment of the client, if appropriate; and
- (5) Any official who has placed a detainer on a client as described in subdivision (a)(5) of this section

of the escape or breach of condition of the client's release upon occurrence of either action and of his subsequent return to the facility. (1899, c. 1, s. 27; Rev., s. 4563; C.S., s. 6175; 1927, c. 114; 1945, c. 952, s. 12; 1953, c. 256, s. 1; 1955, c. 887, s. 3; 1973, c. 673, s. 11; 1983, c. 548; 1985, c. 589, s. 2; c. 695, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 12-14; 1987, c. 749, s. 1.)

**Effect of Amendments. —**

The 1987 amendment, effective October 1, 1987, rewrote this section.

## **§ 122C-205.1. Discharge of clients who escape or breach the condition of release.**

(a) As described in G.S. 122C-205(a), when a client of a 24-hour facility escapes or breaches the condition of his release and does not return to the facility, the facility shall:

- (1) If the client was admitted under Part 2 of this Article or under Parts 3 or 4 of this Article to a nonrestrictive facility, discharge the client based on the professional judgment of the responsible professional;
- (2) If the client was admitted under Part 3 or Part 4 of this Article to a restrictive facility, discharge the client when the period for continued treatment, as specified by the court, expires;
- (3) If the client was admitted pending a district court hearing under Part 7 of this Article, request that the court consider dismissal or continuance of the case at the initial district court hearing; or
- (4) If the client was committed under Part 7 of this Article, discharge the client when the commitment expires.

(b) As described in G.S. 122C-205(a), when a client of a 24-hour facility who was admitted under Part 8 of this Article escapes or breaches the conditions of his release and does not return to the



facility, the facility may discharge the client from the facility based on the professional judgment of the responsible professional and following consultation with the appropriate area authority or physician.

(c) Upon discharge of the client, the 24-hour facility shall notify all the persons directed to be notified of the client's escape or breach of conditional release under 122C-205(a), (b) and (d) that the client has been discharged.

(d) If the client is returned to the 24-hour facility subsequent to discharge from the facility, applicable admission or commitment procedures shall be followed, when appropriate. (1987, c. 674, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 674, s. 3 makes this section effective October 1, 1987.

## § 122C-210.1. Immunity from liability.

**Legal Periodicals.** — For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Commit-

ted by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

### CASE NOTES

**Quoted** in *Currie v. United States*, 644 F. Supp. 1074 (M.D.N.C. 1986).

## § 122C-210.2. Research at State facilities for the mentally ill.

(a) For research purposes, State facilities for the mentally ill may be designated by the Secretary as facilities for the voluntary admission of adults who are not admissible as clients otherwise. Designation of these facilities shall be made in accordance with rules of the Secretary that assure the protection of those admitted for research purposes.

(b) Individuals may be admitted to such designated facilities on either an outpatient or inpatient basis.

(c) The Human Rights Committee of the designated facility shall monitor the care of individuals admitted for research during their participation in any research program.

(d) For these individuals admitted to such designated facilities for research purposes only, the following provisions shall apply:

- (1) A written application for admission pursuant to G.S. 122C-211(a) and an examination by a physician within 24 hours of admission shall be provided to each of these individuals;
- (2) They shall be exempt from the provisions of G.S. 122C-57(a) governing the rights to treatment and to a treatment plan; the requirements of G.S. 122C-61(2) and G.S. 122C-212(b); and the requirements of any single portal of entry and exit plan; however, nothing in this section shall take away the individual's right to be informed of the potential risks and alleged benefits of their participation in any research program;

- (3) The Secretary shall exempt these individuals from the provisions of Article 7 of Chapter 143 of the General Statutes requiring payment for treatment in a State institution. The Secretary may also authorize reasonable compensation to be paid to individuals participating in research projects for their services; provided, that the compensation is paid from research grant funds; and
- (4) The Commission shall adopt rules regarding the admission, care and discharge of those individuals admitted for research purposes only. (1987, c. 358, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 358, s. 3 makes this section effective October 1, 1987.

### Part 3. Voluntary Admissions and Discharges, Minors, Facilities for the Mentally Ill and Substance Abusers.

#### § 122C-221. Admissions.

(a) Except as otherwise provided in this Part, a minor may be admitted to a facility if the minor is mentally ill or a substance abuser and in need of treatment. Except as otherwise provided in this Part, the provisions of G.S. 122C-211 shall apply to admissions of minors under this Part. Except as provided in G.S. 90-21.5, in applying for admission to a facility, in consenting to medical treatment when consent is required, and in any other legal procedure under this Article, the legally responsible person shall act for the minor. If a minor reaches the age of 18 while in treatment under this Part, further treatment is authorized only on the written authorization of the client or under the provisions of Part 7 or Part 8 of Article 5 of this Chapter.

(b) The Commission shall adopt rules governing procedures for admission to 24-hour facilities not falling within the category of facilities where freedom of movement is restricted. These rules shall be designed to ensure that no minor is improperly admitted to or improperly remains in a 24-hour facility. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

**Editor's Note.** —

Session Laws 1987, c. 370 rewrote this Part. Where appropriate, the historical citations to the sections in the Part as originally enacted have been added to

corresponding sections in the rewritten Part.

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, rewrote this section.

#### § 122C-222. Admissions to State facilities.

Admission of a minor who is a resident of a county that is not in a single portal area shall be made to a State facility following screening and upon referral by an area authority, a physician, or an eligible psychologist. Further planning of treatment and discharge for the minor is the joint responsibility of the State facility and the person making the referral. (1987, c. 370, s. 1.)

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, rewrote this section, which formerly related to emergency admission to a 24-hour facility. As to emergency admission to a 24-hour facility, see now § 122C-223.

### § 122C-223. Emergency admission to a 24-hour facility.

(a) In an emergency situation, when the legally responsible person does not appear with the minor to apply for admission, a minor who is mentally ill or a substance abuser and in need of treatment may be admitted to a 24-hour facility upon his own written application. The application shall serve as the initiating document for the hearing required by G.S. 122C-224.

(b) Within 24 hours of admission, the facility shall notify the legally responsible person of the admission unless notification is impossible due to an inability to identify, to locate, or to contact him after all reasonable means to establish contact have been attempted.

(c) If the legally responsible person cannot be located within 72 hours of admission, the responsible professional shall initiate proceedings for juvenile protective services as described in Article 44 of Chapter 7A of the General Statutes in either the minor's county of residence or in the county in which the facility is located.

(d) Within 24 hours of an emergency admission to a State facility, the State facility shall notify the area authority and, as appropriate, the minor's physician or eligible psychologist. Further planning of treatment and discharge for the minor is the joint responsibility of the State facility and the appropriate person in the community. (1973, c. 1084; 1983, c. 302, s. 1; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, rewrote this section, which formerly related to judicial determinations. As to judicial review of voluntary admissions, see now § 122C-224. Former § 122C-222 related to emergency admission to a 24-hour facility.

### § 122C-224. Judicial review of voluntary admission.

(a) When a minor is admitted to a 24-hour facility where the minor will be subjected to the same restrictions on his freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held by the district court in the county in which the 24-hour facility is located within 15 days of the day that the minor is admitted to the facility. A continuance of not more than five days may be granted.

(b) Before the admission, the facility shall provide the minor and his legally responsible person with written information describing the procedures for court review of the admission and informing them about the discharge procedures. They shall also be informed that, after a written request for discharge, the facility may hold the minor for 72 hours during which time the facility may apply for a petition for involuntary commitment.

(c) Within 24 hours after admission, the facility shall notify the clerk of court in the county where the facility is located that the



minor has been admitted and that a hearing for concurrence in the admission must be scheduled. At the time notice is given to schedule a hearing, the facility shall notify the clerk of the names and addresses of the legally responsible person and the responsible professional. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, rewrote this section, which formerly related to discharges. As to discharges, see now § 122C-224.7. Former § 122C-223 related to judicial determinations.

### § 122C-224.1. Duties of clerk of court.

(a) Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk of superior court, under direction of the district court judge, shall appoint an attorney for the minor. When a minor has been admitted to a State facility for the mentally ill, the attorney appointed shall be the attorney employed in accordance with G.S. 122C-270(a) through (c). All minors shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any minor an affidavit of indigency. The attorney shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency. The judge may require payment of the attorney's fee from a person other than the minor as provided in G.S. 7A-450.1 through G.S. 7A-450.4.

(b) Upon receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk shall calendar a hearing to be held within 15 days of admission for the purpose of review of the minor's admission. Notice of the time and place of the hearing shall be given as provided in G.S. 1A-1, Rule 4(j) to the attorney in lieu of the minor, as soon as possible but not later than 72 hours before the scheduled hearing. Notice of the hearing shall be sent to the legally responsible person and the responsible professional as soon as possible but not later than 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address.

(c) The clerk shall schedule all hearings and rehearings and send all notices as required by this Part. (1987, c. 370, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

### § 122C-224.2. Duties of the attorney for the minor.

(a) The attorney shall meet with the minor within 10 days of his appointment but not later than 48 hours before the hearing. In addition, the attorney shall inform the minor of the scheduled hearing and shall give the minor a copy of the notice of the time and place of the hearing no later than 48 hours before the hearing.

(b) The attorney shall counsel the minor concerning the hearing procedure and the potential effects of the hearing proceeding on the minor. If the minor does not wish to appear, the attorney shall file a motion with the court before the scheduled hearing to waive the minor's right to be present at the hearing procedure except during

the minor's own testimony. If the attorney determines that the minor does not wish to appear before the judge to provide his own testimony, the attorney shall file a separate motion with the court before the hearing to waive the minor's right to testify.

(c) In all actions on behalf of the minor, the attorney shall represent the minor until formally relieved of the responsibility by the judge. (1987, c. 370, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

### § 122C-224.3. Hearing for review of admission.

(a) Hearings shall be held at the 24-hour facility in which the minor is being treated, if it is located within the judge's judicial district, unless the judge determines that the court calendar will be disrupted by such scheduling. In cases where the hearing cannot be held in the 24-hour facility, the judge may schedule the hearing in another location, including the judge's chambers. The hearing may not be held in a regular courtroom, over objection of the minor's attorney, if in the discretion of the judge a more suitable place is available.

(b) The minor shall have the right to be present at the hearing unless the judge rules favorably on the motion of the attorney to waive the minor's appearance. However, the minor shall retain the right to appear before the judge to provide his own testimony and to respond to the judge's questions unless the judge makes a separate finding that the minor does not wish to appear upon motion of the attorney.

(c) Certified copies of reports and findings of physicians, psychologists and other responsible professionals as well as previous and current medical records are admissible in evidence, but the minor's right, through his attorney, to confront and cross-examine witnesses may not be denied.

(d) Hearings shall be closed to the public unless the attorney requests otherwise.

(e) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the attorney, on request, by the clerk upon the direction of a district court judge. The copies shall be provided at State expense.

(f) For an admission to be authorized beyond the hearing, the minor must be (1) mentally ill or a substance abuser and (2) in need of further treatment at the 24-hour facility to which he has been admitted. Further treatment at the admitting facility should be undertaken only when lesser measures will be insufficient. It is not necessary that the judge make a finding of dangerousness in order to support a concurrence in the admission.

(g) The court shall make one of the following dispositions:

- (1) If the court finds by clear, cogent, and convincing evidence that the requirements of subsection (f) have been met, the court shall concur with the voluntary admission and set the length of the authorized admission of the minor for a period not to exceed 90 days; or
- (2) If the court determines that there exist reasonable grounds to believe that the requirements of subsection (f) have been met but that additional diagnosis and evaluation is needed

before the court can concur in the admission, the court may make a one time authorization of up to an additional 15 days of stay, during which time further diagnosis and evaluation shall be conducted; or

- (3) If the court determines that the conditions for concurrence or continued diagnosis and evaluation have not been met, the judge shall order that the minor be released.

(h) The decision of the District Court in all hearings and rehearings is final. Appeal may be had to the Court of Appeals by the State or by any party on the record as in civil cases. The minor may be retained and treated in accordance with this Part, pending the outcome of the appeal, unless otherwise ordered by the District Court or the Court of Appeals. (1987, c. 370, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

#### § 122C-224.4. Rehearings.

(a) A minor admitted to a 24-hour facility upon order of the court for further diagnosis and evaluation shall have the right to a rehearing if the responsible professional determines that the minor is in need of further treatment beyond the time authorized by the court for diagnosis and evaluation.

(b) A minor admitted to a 24-hour facility upon the concurrence of the court shall have the right to a rehearing for further concurrence in continued treatment before the end of the period authorized by the court. The court shall review the continued admission in accordance with the hearing procedures in this Part. The court may order discharge of the minor if the minor no longer meets the criteria for admission. If the minor continues to meet the criteria for admission the court shall concur with the continued admission of the minor and set the length of the authorized admission for a period not to exceed 180 days. Subsequent rehearings shall be scheduled at the end of each subsequent authorized treatment period, but no longer than every 180 days.

(c) The responsible professional shall notify the clerk, no later than 15 days before the end of the authorized admission, that continued stay beyond the authorized admission is recommended for the minor. The clerk shall calendar the rehearing to be held before the end of the current authorized admission. (1987, c. 370, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

#### § 122C-224.5. Transportation.

When it is necessary for a minor to be transported to a location other than the treating facility for the purpose of a hearing, transportation shall be provided under the provisions of G.S. 122C-251. However, the 24-hour facility may obtain permission from the court to routinely provide transportation of minors to and from hearings. (1987, c. 370, s. 1.)



**Editor's Note.** — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

### **§ 122C-224.6. Treatment pending hearing and after authorization for or concurrence in admission.**

(a) Pending the initial hearing and after authorization for further diagnosis and evaluation, or concurrence in admission, the responsible professional may administer to the minor reasonable and appropriate medication and treatment that is consistent with accepted medical standards and consistent with Article 3 of this Chapter.

(b) The responsible professional may release the minor conditionally for periods not in excess of 30 days on specified appropriate conditions. Violation of the conditions is grounds for return of the minor to the 24-hour facility. A law enforcement officer, on request of the responsible professional, shall take the minor into custody and return him to the facility in accordance with G.S. 122C-205. (1987, c. 370, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall become effective October 1, 1987.

### **§ 122C-224.7. Discharge.**

(a) The responsible professional shall unconditionally discharge a minor from treatment at any time that it is determined that the minor is no longer mentally ill or a substance abuser, or no longer in need of treatment at the facility.

(b) The legally responsible person may file a written request for discharge from the facility at any time. The facility may hold the minor in the facility for 72 hours after receipt of the request for discharge. If the responsible professional believes that the minor is mentally ill and dangerous to himself or others, he may file a petition for involuntary commitment under the provisions of Part 7 of this Article. If the responsible professional believes that the minor is a substance abuser and dangerous to himself or others, he may file a petition for involuntary commitment under the provisions of Part 8 of this Article. If an order authorizing the holding of the minor under involuntary commitment procedures is issued, further treatment and holding shall follow the provisions of Part 7 or Part 8 whichever is applicable. If an order authorizing the holding of the minor under involuntary commitment procedures is not issued, the minor shall be discharged.

(c) If a client reaches age 18 while in treatment, and the client refuses to sign an authorization for continued treatment within 72 hours of reaching 18, he shall be discharged unless the responsible professional obtains an order to hold the client under the provisions of Part 7 or Part 8 of this Article pursuant to an involuntary commitment. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2; 1987, c. 370, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 370, which rewrote this Article, provides in s. 2 that this section shall be- come effective October 1, 1987. Former § 122C-224 related to discharges.

## Part 6. Involuntary Commitment—General Provisions.

### § 122C-251. Transportation.

(b) Except as provided in subsections (f) and (g) or in G.S. 122C-408(b), transportation between counties under the involuntary commitment proceedings of this Article for admission to a 24-hour facility shall be provided by the county where the respondent is taken into custody. Transportation between counties under the involuntary commitment proceedings of this Article for respondents held in 24-hour facilities who have requested a change of venue for the district court hearing shall be provided by the county where the petition for involuntary commitment was initiated. Transportation between counties under the involuntary commitment proceedings of this Article for discharge of a respondent from a 24-hour facility shall be provided by the county of residence of the respondent. However, a respondent being discharged from a facility may use his own transportation at his own expense.

(1899, c. 1, s. 32; Rev., s. 4555; 1919, c. 326, s. 4; C.S., ss. 6201, 6202; 1945, c. 952, ss. 29, 30; 1953, c. 256, s. 6; 1961, c. 186; 1963, c. 1184, s. 1; 1969, c. 982; 1973, c. 1408, s. 1; 1979, c. 915, ss. 21, 22; 1983, c. 138, ss. 1, 2; 1985, c. 589, s. 2; 1987, c. 268.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

amendment, effective July 1, 1987, inserted the present second sentence of subsection (b).

**Effect of Amendments.** — The 1987

## Part 7. Involuntary Commitment of the Mentally Ill and the Mentally Retarded with Behavior Disorders; Facilities for the Mentally Ill.

### § 122C-262. Special emergency procedure for individuals needing immediate hospitalization.

Anyone, including a law enforcement officer, who has knowledge of an individual who is subject to inpatient commitment according to the criteria of G.S. 122C-261(a) and who requires immediate hospitalization to prevent harm to himself or others, may transport the individual directly to an area facility or other place, including a State facility for the mentally ill, for examination by a physician or eligible psychologist, in accordance with G.S. 122C-263(a). If the individual meets the criteria required in G.S. 122C-261(a), the physician or eligible psychologist shall so certify in writing before any official authorized to administer oaths. The certificate shall also

state the reason that the individual requires immediate hospitalization.

If the physician or eligible psychologist executes the oath, appearance before a magistrate shall be waived. The physician or eligible psychologist shall send a copy of the certificate to the clerk of superior court by the most reliable and expeditious means. If it cannot be reasonably anticipated that the clerk will receive the copy within 24 hours (excluding Saturday, Sunday and holidays) of the time that it was signed, the physician or eligible psychologist shall also communicate his findings to the clerk by telephone.

Anyone, including a law enforcement officer if necessary, may transport the individual to a 24-hour facility described in G.S. 122C-252 for examination and treatment pending a district court hearing. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for his care at a private 24-hour facility, the law enforcement officer or other designated person providing transportation shall take the respondent to a State facility for the mentally ill designated by the Commission in accordance with G.S. 143B-147(a)(1)a and immediately notify the clerk of superior court of his actions. The physician's or eligible psychologist's certificate shall serve as the custody order and the law enforcement officer or other designated person shall provide transportation in accordance with the provisions of G.S. 122C-251.

Respondents received at a 24-hour facility under the provisions of this section shall be examined by a second physician in accordance with G.S. 122C-266. After receipt of notification that the District Court has determined reasonable grounds for the commitment, further proceedings shall be carried out in the same way as all other respondents under this Part. (1973, c. 726, s. 1; c. 1408, s. 1; 1985, c. 589, s. 2; c. 695, s. 2; 1987, c. 596, s. 1.)

**Effect of Amendments.** — The 1987 amendment, effective October 1, 1987, rewrote this section.

### **§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist.**

(b) The examination set forth in subsection (a) of this section is not required if:

- (1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;
- (2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found not guilty by reason of insanity or incapable of proceeding; or
- (3) Repealed by Session Laws 1987, c. 596, s. 3, effective October 1, 1987.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252.

(1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 4; c. 679, s. 8; c. 739, s. 1; 1979, c. 358, s. 27; c. 915, s. 4; 1983, c. 380, ss. 4, 10; c. 638, ss. 6, 7, 25.1; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, ss. 2, 5, 6; 1985 (Reg. Sess., 1986), c. 863, s. 18; 1987, c. 596, s. 3.)



**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1987 amendment, effective Octo-

ber 1, 1987, deleted subdivision (b)(3), which read "The respondent is in custody under the special emergency procedure described in G.S. 122C-262."

## § 122C-264. Duties of clerk of superior court.

(b1) Upon receipt of a physician's or eligible psychologist's certificate that a respondent meets the criteria of G.S. 122C-261(a) and that immediate hospitalization is needed, the clerk of superior court of the county where the 24-hour facility is located shall submit the certificate to the Chief District Court Judge. The court shall review the certificate within 24 hours (excluding Saturday, Sunday and holidays) for a finding of reasonable grounds in accordance with 122C-261(b). The clerk shall notify the 24-hour facility of the court's findings by telephone and shall proceed as set forth in (b), (c) and (f) of this section.

(1973, c. 1408, s. 1; 1977, c. 400, s. 5; c. 414, s. 1; 1979, c. 915, s. 5; 1983, c. 380, s. 9; c. 638, ss. 8, 16; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 7; 1985 (Reg. Sess., 1986), c. 863, s. 19; 1987, c. 596, s. 2.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1987 amendment, effective October 1, 1987, added subsection (b1).

## § 122C-266. Inpatient commitment; second examination and treatment pending hearing.

(e) If the 24-hour facility described in G.S. 122C-252 or G.S. 122C-262 is the facility in which the first examination by a physician or eligible psychologist occurred and is the same facility in which the respondent is held, the second examination must occur not later than the following regular working day. (1973, c. 726, s. 1; c. 1408, s. 1; 1977, c. 400, s. 6; 1979, c. 915, s. 6; 1983, c. 380, s. 5; c. 638, ss. 9, 10; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 2; 1987, c. 596, s. 4.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1987 amendment, effective October 1, 1987, added "or G.S. 122C-262" near the beginning of subsection (e).

## § 122C-267. Outpatient commitment; district court hearing.

(h) To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-263(d)(1). The court shall record the facts which support its findings and shall show on the order the center or physician who is responsible for the management and supervision of the respondent's outpatient commitment. (1973, c. 726, s. 1; c. 1408, s. 1; 1975, cc. 322, 459; 1977, c. 400, s. 7; c. 1126, s. 1; 1979, c. 915, ss. 7, 13; 1983, c. 380, s. 6; c. 638, ss. 12, 13; c. 864, s. 4; 1985, c. 589, s. 2; c. 695, s. 8; 1987, c. 282, s. 18.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

The 1987 amendment, effective June

4, 1987, substituted "G.S. 122C-263(d)(1)" for "G.S. 122C-262(d)(1)" at the end of the first sentence of subsection (h).

## § 122C-277. Release and conditional release; judicial review.

**Legal Periodicals.**

For note, "Psychiatrists' Liability to Third Parties for Harmful Acts Commit-

ted by Dangerous Patients," see 64 N.C.L. Rev. 1534 (1986).

### Part 8. Involuntary Commitment of Substance Abusers, Facilities for Substance Abusers.

## § 122C-290. Duties for follow-up on commitment order.

(b) If the respondent whose treatment is provided on an outpatient basis fails to comply with all or part of the prescribed treatment after reasonable effort to solicit the respondent's compliance or whose treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b), the area authority or physician may request the clerk or magistrate to order the respondent taken into custody for the purpose of examination. Upon receipt of this request, the clerk or magistrate shall issue an order to a law enforcement officer to take the respondent into custody and to take him immediately to the designated area authority or physician for examination. The law enforcement officer shall turn the respondent over to the custody of the physician or area authority who shall conduct the examination and release the respondent or have the respondent taken to a 24-hour facility upon a determination that treatment in the facility will benefit the respondent. Transportation to the 24-hour facility shall be provided as specified in G.S. 122C-251, upon notice to the clerk or magistrate that transportation is necessary, or as provided in G.S. 122C-408(b). If placement in a 24-hour facility is to exceed 45 consecutive days, the area authority or physician shall notify the clerk of court by the 30th day and request a supplemental hearing as specified in G.S. 122C-291.

(1983, c. 638, s. 16; c. 864, s. 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 32; 1987, c. 674, s. 2; c. 750.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** —

Session Laws 1987, c. 674, s. 2, effective October 1, 1987, inserted "or whose

treatment is provided on an inpatient basis is discharged in accordance with G.S. 122C-205.1(b)" in the first sentence of subsection (b).

Session Laws 1987, c. 750, effective August 7, 1987, rewrote subsection (b).

## ARTICLE 6.

*Special Provisions.*

## Part 1. Camp Butner and Community of Butner.

**§ 122C-403. Secretary's authority over Camp Butner reservation.**

The Secretary shall administer the Camp Butner reservation. In performing this duty, the Secretary has the powers listed below. In exercising these powers the Secretary has the same authority and is subject to the same restrictions that the governing body of a city would have and would be subject to if the reservation was a city, unless this section provides to the contrary. The Secretary may:

- (1) Regulate airports on the reservation in accordance with the powers granted in Article 4 of Chapter 63 of the General Statutes.
- (2) Take actions in accordance with the general police power granted in Article 8 of Chapter 160A of the General Statutes.
- (3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, 3A, 3B, 5, 6, and 7, of Chapter 160A of the General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply.
- (4) Establish one or more planning agencies in accordance with the power granted in G.S. 160A-361 or designate the Community of Butner Planning Commission as the planning agency for the reservation.
- (5) Regulate streets, traffic, and parking on the reservation in accordance with the powers granted in Article 15 of Chapter 160A of the General Statutes.
- (6) Control erosion and sedimentation on the reservation in accordance with the powers granted in G.S. 160A-458 and Article 4 of Chapter 113A of the General Statutes.
- (7) Contract with and undertake agreements with units of local government in accordance with the powers granted in G.S. 160A-413 and Article 20, Part 1, of Chapter 160A of the General Statutes.
- (8) Regulate floodways on the reservation in accordance with the powers granted in G.S. 160A-458.1 and Article 21, Part 6, of Chapter 143 of the General Statutes.
- (9) Assign duties given by the statutes listed in the preceding subdivisions to a local official to the Chief of Support Services of John Umstead Hospital or another appropriate person.
- (10) Adopt rules to carry out the purposes of this Article. (1949, c. 71, s. 3; 1955, c. 887, s. 1; 1959, c. 1028, s. 4; 1963, c. 1166, s. 10; 1965, c. 933; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 1987, c. 536, s. 2.)



**Editor's Note.** — Session Laws 1987, c. 536, s. 6 provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his ap-

proval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

**Effect of Amendments.** — The 1987 amendment, effective July 2, 1987, rewrote this section.

## § 122C-404. Community of Butner Planning Commission.

(h) Prior to the adoption of any rule under this section that will apply to the territory of Camp Butner reservation other than the grounds of State facilities or State institutions, the Secretary shall consult with the Community of Butner Planning Commission.

(i) In addition to the duties prescribed by this section, the Secretary may assign other duties to the Community of Butner Planning Commission that relate to the Community of Butner or the Camp Butner reservation.

If the Secretary is authorized by statute to create a board or other group, some of whose members are required to have special qualifications, the Secretary may assign the duties of the board or other group to the Community of Butner Planning Commission if the members of the Planning Commission have the requisite qualifications. (1985, c. 589, s. 2; 1987, c. 536, s. 3; c. 827, s. 245.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** —

Session Laws 1987, c. 536, s. 6 provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the

ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

**Effect of Amendments.** — Session Laws 1987, c. 536, s. 3, effective July 2, 1987, added the second paragraph of subsection (i).

Session Laws 1987, c. 827, s. 245, effective August 13, 1987, deleted "ordinance or" preceding "rule" in subsection (h).

## § 122C-405. Procedure applicable to rules.

Rules adopted by the Secretary under this Article shall be adopted in accordance with the procedures for adopting a city ordinance on the same subject, shall be subject to review in the manner provided for a city ordinance adopted on the same subject, and shall be enforceable in accordance with the procedures for enforcing a city ordinance on the same subject. Violation of a rule adopted under this Article is punishable as provided in G.S. 122C-406.

Rules adopted under this Article may apply to part or all of the Camp Butner reservation. If a public hearing is required before the adoption of a rule, the Community of Butner Planning Commission shall conduct the hearing. (1949, c. 71, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 614, s. 6; 1985, c. 589, s. 2; 1987, c. 536, s. 4; c. 720, s. 3.)

**Editor's Note. —**

Session Laws 1987, c. 536, s. 6 provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act (July 2, 1987) shall continue to apply until the Secretary of the Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation.

**Effect of Amendments. —**

Session Laws 1987, c. 536, s. 4, effective July 2, 1987, rewrote this section.

Session Laws 1987, c. 720, s. 3, effective August 1, 1987, substituted a reference to Chapter 150B for a reference to Chapter 150A in this section as it read prior to its amendment by Session Laws 1987, c. 536, s. 4.

## **§ 122C-408. Butner Public Safety Division of the Department of Crime Control and Public Safety; jurisdiction; fire and police district.**

(b) After taking the oath of office required for law-enforcement officers, the special police officers authorized by this section shall have the authority of deputy sheriffs of Durham and Granville Counties in those counties respectively. Within the territorial jurisdiction stated in subsection (a) of this section, the special police officers have the primary responsibility to enforce the laws of North Carolina and any rule applicable to that territory adopted under authority of this Part or under G.S. 143-116.6 or G.S. 143-116.7 or under the authority granted any other agency of the State and also have the powers set forth for firemen in Articles 3, 5 and 6 of Chapter 69 of the General Statutes. Any civil or criminal process to be served on any individual confined at any State facility within the territorial jurisdiction described in subsection (a) of this section shall be forwarded by the sheriff of the county in which the process originated to the Director of the Butner Public Safety Division. Special police officers authorized by this section shall be assigned to transport any individual transferred to or from any State facility within the territorial jurisdiction described in subdivision (a) of this section to or from the psychiatric service of North Carolina Memorial Hospital. (1949, c. 71, s. 6; 1955, c. 887, s. 1; 1959, c. 35; c. 1028, s. 4; 1963, c. 1166, s. 10; 1973, c. 476, s. 133; 1981, c. 491, s. 1; c. 964, s. 19; c. 1127, s. 49; 1983, c. 761, s. 165; 1985, c. 589, s. 2; 1987, c. 827, s. 246.)

**Only Part of Section Set Out. —** As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments. —** The 1987

amendment, effective August 13, 1987, substituted "rule" for "ordinance or regulation" in the second sentence of subsection (b).

## **§ 122C-410. Authority of county or city over Camp Butner reservation.**

(a) A municipality may not annex territory extending into or extend its extraterritorial jurisdiction into the Camp Butner reservation without written approval from the Secretary of each proposed annexation or extension. The procedures, if any, for withdrawing approval granted by the Secretary to an annexation or extension of extraterritorial jurisdiction shall be stated in the notice of approval.

(b) A county ordinance may apply in part or all of the Camp Butner reservation if the Secretary gives written approval of the ordinance. The Secretary may withdraw his approval of a county ordinance by giving written notification, by certified mail, return receipt requested, to the county. A county ordinance ceases to be effective in the Camp Butner reservation 30 days after the county receives the written notice of the withdrawal of approval. (1987, c. 536, s. 5.)

**Editor's Note.** — Session Laws 1987, c. 536, s. 6 makes this section effective upon ratification. Section 6 further provides that a county ordinance that applies to the Camp Butner reservation on the effective date of the act shall continue to apply until the Secretary of the

Department of Human Resources withdraws his approval of the ordinance or the county amends or repeals the ordinance so that it no longer applies to the Camp Butner reservation. The act was ratified July 2, 1987.

### § 122C-411. Fire protection contracts.

The Department of Crime Control and Public Safety may contract with industries in the vicinity of Butner to provide fire protection to those industries. Those contracts shall provide for a payment by any contracting industry calculated on the basis of twenty cents (20¢) per one hundred dollars (\$100.00) of assessed valuation. (1987, c. 845, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 845, s. 2 makes this section effective

upon ratification. The act was ratified August 14, 1987.

**§§ 122C-412 to 122C-420:** Reserved for future codification purposes.



## Chapter 122D.

### North Carolina Agricultural Finance Act.

Sec.

122D-3. Definitions.

122D-6. General powers of Authority.

Sec.

122D-16. Trust funds.

122D-23. Immunity.

#### § 122D-1. Short title.

##### Editor's Note. —

Session Laws 1987, c. 335, s. 3 provides:

"Notwithstanding G.S. 150B-13, the North Carolina Agricultural Finance Authority may, until six months from the effective date of this act, adopt temporary rules to carry out the purposes of Chapter 122D of the General Statutes without prior notice or hearing or upon any abbreviated notice or hearing the

Authority finds practicable. The Authority shall begin normal rule-making procedures on permanent rules in accordance with Article 2 of Chapter 150B at the same time it adopts a temporary rule. Temporary rules adopted under this section shall be published by the Director of the Office of Administrative Hearings in the North Carolina Register and shall be effective for a period of not longer than 180 days."

#### § 122D-3. Definitions.

As used in this Chapter, the following terms, unless the context clearly indicates a different meaning, shall have the following meanings:

- (1) "Agricultural Loan" means a loan made by a lending institution or by the Authority to any person for the purpose of financing or refinancing land acquisition or improvement; soil conservation; irrigation; construction, renovation or expansion of buildings and facilities; purchase of farm fixtures, livestock, poultry, and fish of any kind; seeds; fertilizers; pesticides; feeds; machinery; equipment; containers or supplies or any other products employed in the production, cultivation, harvesting, storage, marketing, distribution or export of agricultural products.

(1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 3.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987

amendment, effective April 29, 1987, inserted "or refinancing" near the beginning of subdivision (1).

#### § 122D-6. General powers of Authority.

The Authority shall have all the powers necessary to give effect to and carry out the purposes and provisions of this Chapter, including the following powers in addition to all other powers granted by other provisions of this Chapter, to:

- (15) Borrow money, issue bonds, and provide for the rights of the lenders or holders thereof and purchase, discount, sell, negotiate and guarantee, insure, coinsure and reinsure note, drafts, checks, bills of exchange, acceptances, bankers acceptances, cable transfers, letters of credit and

other evidence of indebtedness with or without credit enhancement devices;

(1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 4.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987

amendment, effective April 29, 1987, added "with or without credit enhancement devices" at the end of subdivision (15).

## § 122D-16. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Chapter shall be deemed to be trust funds to be held and applied solely as provided in this Chapter. The resolution authorizing any obligations or the trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited, shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this Chapter and such resolution or trust agreement may provide. Any such moneys or any other moneys of the Authority may be invested in the following:

- (1) Bonds, notes or treasury bills of the United States;
- (2) Non-convertible debt securities of the following issuers:
  - a. The Federal Home Loan Bank Board;
  - b. The Federal National Mortgage Association;
  - c. The Federal Farm Credit Bank; and
  - d. The Student Loan Marketing Association;
- (3) Any other obligations not listed above which are guaranteed as to principal and interest by the United States or any of its agencies;
- (4) Certificates of deposit and other evidences of deposit at state and federal chartered banks and savings and loan associations; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof be fully collateralized;
- (5) Obligations of the United States or its agencies under a repurchase agreement for a shorter time than the maturity date of the security itself if the market value of the security itself is more than the amount of funds invested;
- (6) Money market funds whose portfolios consist of any of the foregoing investments;
- (7) A guaranteed investment or similar contract, which provides for the investment of funds at a guaranteed rate of return, with an insurance company or depository financial institution with a claim paying rating of no less than either of the two highest grades given by a nationally recognized rating agency; and
- (8) Any other investment authorized by law for the investment of funds by a unit of local government. (1983, c. 789, s. 1; 1985 (Reg. Sess., 1986), c. 1011, s. 1; 1987, c. 112, s. 1.)

**Effect of Amendments.** — The 1987 amendment, effective April 29, 1987, substituted “in the following” for “as provided in G.S. 159-28.1” at the end of the introductory paragraph, and added subdivisions (1) through (8).

### § 122D-23. Immunity.

There shall be no liability on the part of and no cause of action of any nature may arise against the members of the Authority for any acts or omission to act by them in the performance of their powers and duties under this Chapter. The immunity established by this section shall not extend to willful neglect or malfeasance that would otherwise be actionable. The immunity established by this section further shall not extend to any act or omission occurring or arising out of the operation of a motor vehicle. The immunity established herein is waived to the extent of any indemnification by insurance for the liability of the members of the authority for which this act otherwise provides immunity. (1987, c. 335, s. 1.)

**Editor’s Note.** — Session Laws 1987, c. 335, s. 5 makes this section effective upon ratification. The act was ratified June 10, 1987.



## Chapter 122E.

**Editor's Note.** — The legislation and annotations affecting Chapter 122E have been included in a recently published replacement chapter.

**Chapter 125.**  
**Libraries.**

<b>Article 1.</b>		Sec.	
<b>State Library Agency.</b>		125-11.7.	State Library designated the official depository for all State publications.
Sec.		125-11.8.	State Publications Clearinghouse created.
125-2.	Powers and duties of Department of Cultural Resources.	125-11.9.	Powers and duties of the State Library.
<b>Article 1A.</b>		125-11.10.	Duties of State agencies.
<b>State Depository Library System.</b>		125-11.11.	Advisory Committee.
		125-11.12.	Report to the Joint Legislative Commission on Governmental Operations.
125-11.5.	Purpose.		
125-11.6.	Definitions.		

**ARTICLE 1.**

*State Library Agency.*

**§ 125-2. Powers and duties of Department of Cultural Resources.**

The Department of Cultural Resources shall have the following powers and duties:

- (4) To purchase and maintain collections of books, periodicals, newspapers, maps, films, audiovisual and other materials; to subscribe to computerized databases; to provide other resources, services and programs; and to serve as an information distribution center for State government and the people of the State as a means for the promotion of knowledge, education, commerce and business in the State. The scope of the library's collections, resources and services should be determined by the Secretary of Cultural Resources upon consideration of the recommendations of the State Library Commission; and in making these decisions, the Secretary shall take into account the collections, resources and services of other libraries throughout the State and the availability of such collections, resources and services to the general public. All materials owned by the State Library shall be available for free circulation to libraries and to all citizens of the State under rules and regulations fixed by the librarian, except that the librarian may restrict the circulation of books and other materials which, because they are rare or are used intensively in the library for reference purposes or for other good reasons, should be retained in the library at all times. The public schools shall be given equal priority in borrowing all films which are available for circulation.
- (5) To give assistance, advice and counsel to other State agencies maintaining special reference collections as to the best means of establishing and administering such libraries and collections.

- (5a) To provide for the establishment and maintenance of union catalogs.
- (7) Repealed by Session Laws 1987, c. 199, s. 4, effective July 1, 1987.
- (9) To provide library services to blind and physically handicapped readers of North Carolina by making available to them books and other reading materials in braille, or sound recordings or any other medium used by the blind and physically handicapped; to enter into contracts and agreements with appropriate libraries and other organizations for the purposes of serving the blind and physically handicapped; to enter into contracts with library agencies of other states for providing library service to the blind and physically handicapped of those states, provided adequate compensation is paid for such service and such contract is otherwise advantageous to this State.
- (10) To plan and coordinate cooperative programs between the various types of libraries within the State of North Carolina, and to coordinate State development with regional and national cooperative library programs; and to assist nonprofit corporations in organization and operation for the purposes of cooperative programs. (1955, c. 505, s. 3; 1961, c. 1161; 1973, c. 476, s. 84; 1977, c. 645, s. 1; 1981, c. 918, s. 4; 1983, c. 819; 1987, c. 199.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective July 1, 1987, rewrote subdivisions (4) and (5), added subdivision (5a), deleted subdivision (7),

relating to sets of logs and journals of the General Assembly for the use of the members, rewrote subdivision (9), and added the language "and to assist nonprofit corporations in organization and operation for the purposes of cooperative programs" at the end of subdivision (10).

## ARTICLE 1A.

### *State Depository Library System.*

#### § 125-11.5. Purpose.

The purpose of this Article is to establish a depository system for the distribution of State publications to designated libraries throughout the State in order to facilitate public access to publications issued by State agencies. (1987, c. 771, s. 2.)

**Editor's Note.** — Session Laws 1987, c. 771, s. 3 makes this Article effective October 1, 1987.



**§ 125-11.6. Definitions.**

As used in this Article:

- (1) "Depository library" means a library designated to receive and maintain State publications and make them available to the public.
- (2) "Document" means any printed document including any report, directory, statistical compendium, bibliography, map, regulation, newsletter, pamphlet, brochure, periodical, bulletin, compilation, or register, regardless of whether the printed document is in paper, film, tape, disk, or any other format.
- (3) "State agency" means every State department, institution, board, and commission.
- (4) "State publication" means any document prepared by a State agency or private organization, consultant, or research firm, under contract with or under the supervision of a State agency: Provided, however, the term "State publication" does not include administrative documents used only within the issuing agency, documents produced for instructional purposes that are not intended for sale or publication, appellate division reports and advance sheets distributed by the Administrative Office of the Courts, the S.B.I. Investigative "Bulletin", documents that will be reproduced in the Senate or House of Representatives Journals, or documents that are confidential pursuant to Article 17 of Chapter 120 of the General Statutes. (1987, c. 771, s. 2.)

**§ 125-11.7. State Library designated the official depository for all State publications.**

The State Library shall be the official, complete, and permanent depository for all State publications, and shall receive five copies of all State publications in addition to the copies required for the depository system: Provided, however, the State Library shall receive only five copies of any State publication offered for sale by a State agency at a price at least high enough to recover production costs: Provided, further, the State Library, notwithstanding the definition of "State publication" contained in this Article, shall have authority to exclude from required deposit in the State Library any items or materials which it finds are not appropriate for deposit. (1987, c. 771, s. 2.)

**§ 125-11.8. State Publications Clearinghouse created.**

(a) A State Publications Clearinghouse is created within the Department of Cultural Resources, the Division of State Library.

(b) The Clearinghouse shall:

- (1) Advise State agencies annually of the number of copies of State publications needed for distribution.
- (2) Advise State agencies annually that they are required to submit only five copies of any State publication offered for sale at a price at least high enough to recover production costs.

- (3) Receive from State agencies promptly after publication the number of copies of State publications specified, and distribute these to the depository libraries.
- (4) Prepare on microfiche one or more copies of each State publication that is printed on paper for reference and interlibrary loan purposes.
- (5) Publish a checklist of State publications and distribute the checklist without charge to all requesting North Carolina libraries.
- (6) Forward two copies of all State publications that are printed on paper to the Library of Congress. (1987, c. 771, s. 2.)

### § 125-11.9. Powers and duties of the State Library.

The State Library:

- (1) Shall carry out the provisions of this act.
- (2) Develop and maintain standards for depository libraries. The standards shall include the ability to receive, process, organize, retain, and make available State publications and the ability to provide reference assistance and interlibrary loan service for depository publications.
- (3) Shall designate depository libraries, taking into account regional distribution and number of persons served, such that State publications will be conveniently accessible to residents in all areas of the State. The State Library may designate at least one library in each congressional district.
- (4) May designate as selective depository libraries those institutions that wish to receive less than the full deposit. Selective depository libraries shall meet the same standards for reference and interlibrary loan service as full depository libraries.
- (5) May enter into depository contracts with public libraries and community, technical, special, college and university libraries that meet the standards for depository eligibility adopted by the Clearinghouse.
- (6) Shall determine how many copies of State publications each State agency must submit for the State depository system. The State Library may permit a State agency to submit fewer copies of a document if the State Library determines that fewer copies are adequate in light of the cost of the document and the projected public interest in the document.
- (7) Shall adopt rules to administer the depository program. These rules may include the State Library's priorities and resulting schedules for collecting, maintaining, and making available State publications in various formats. (1987, c. 771, s. 2.)

**§ 125-11.10. Duties of State agencies.**

(a) State agencies shall send the requested number of copies of each of their publications to the Clearinghouse within 10 days of issuance.

(b) The head of each State agency shall designate a publications officer who shall be responsible for supplying the requested number of copies of each State publication of that agency to the Clearinghouse. Each agency shall notify the Clearinghouse of the identity of its publications officer before October 1, 1987, and within 30 days of any change of publications officer. The publications officer shall supply the Clearinghouse semiannually a complete list of the agency's State publications issued within the previous six months and any other information regarding the publications of the agency requested by the Clearinghouse.

(c) State agencies may request permission from the State Library to submit fewer than the requested number of copies of a document. The request shall include information on the cost of the document and the projected public interest in the document. (1987, c. 771, s. 2.)

**§ 125-11.11. Advisory Committee.**

The Secretary of Cultural Resources may appoint an advisory committee of State officials and depository librarians to review and advise on the operation of the depository system. (1987, c. 771, s. 2.)

**§ 125-11.12. Report to the Joint Legislative Commission on Governmental Operations.**

The Department of Cultural Resources shall report before September 30 each year to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Office on the operation of the State depository library system. (1987, c. 771, s. 2.)



## Chapter 126.

### State Personnel System.

#### Article 1. State Personnel System Established.

- Sec.  
126-4. Powers and duties of State Personnel Commission.  
126-5. Employees subject to Chapter; exemptions.

#### Article 2. Salaries, Promotions, and Leave of State Employees.

- 126-7.1. Posting requirement; State employees receive priority consideration.

#### Article 5. Political Activity of Employees.

126-15.1. Probationary State employee defined.

#### Article 7. The Privacy of State Employee Personnel Records.

126-29. Access to material in file for agency hearing.  
126-30. Fraudulent disclosure and willful nondisclosure on application for State employment; penalties.

- Sec.  
126-31 to 126-33. [Reserved.]

#### Article 8. Employee Appeals of Grievances and Disciplinary Action.

126-34. Grievance appeal for State employees.  
126-36. Appeal of unlawful State employment practice.  
126-36.2. Appeal to Personnel Commission by State employee denied notice of vacancy or priority consideration.  
126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision.  
126-39. State employee defined.  
126-41. Attorney and witness fees.

#### Article 9. The Administrative Procedure Act and Modifications.

126-43, 126-44. [Repealed.]

#### Article 12. Work Options Program for State Employees.

126-78. Administration.

## ARTICLE 1.

### *State Personnel System Established.*

### § 126-1. Purpose of Chapter; application to local employees.

#### CASE NOTES

Cited in *Smith v. Bounds*, 657 F. Supp. 1327 (E.D.N.C. 1986).

#### OPINIONS OF ATTORNEY GENERAL

**Employment and termination of local health director** are subject to the provisions of this chapter, and termination or discharge of a health director must comply with all statutory provi-

sions and regulations duly adopted by the State Personnel Commission pursuant to this chapter. See opinion of Attorney General to Mr. Michael S. Kennedy, Esquire, Attorney for Cleveland County

Board of Health, and Mr. Robert W. Yelton, Esquire, Attorney for Cleveland County, 55 N.C.A.G. 113 (1986).

## § 126-4. Powers and duties of State Personnel Commission.

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

- (5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s, Birthday for all years after 1987. Provided, however, that the Commission shall not provide for a greater number of total paid holidays than were established for the year 1986. The Commission shall not delete Veterans Day as a holiday.
  - (9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, and reinstatement in all cases as the Commission shall find justified.
  - (12) Repealed by Session Laws 1987, c. 320, s. 2, effective June 8, 1987.
  - (13) Repealed by Session Laws 1987, c. 320, s. 3, effective June 8, 1987.
- (1965, c. 640, s. 2; 1971, c. 1244, s. 14; 1975, c. 667, ss. 6, 7; 1977, c. 288, s. 1; c. 866, ss. 1, 17, 20; 1985, c. 617, ss. 2, 3; c. 791, s. 50(b); 1985 (Reg. Sess., 1986), c. 1028, s. 6; 1987, c. 25, s. 2; c. 320, ss. 1-3.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendments, it is not set out.

**Cross References.** — As to the number, appointment, removal, etc., of administrative law judges, see § 7A-759.

**Editor's Note.** — Session Laws 1987, c. 830, s. 1.1 provides that the act shall be known as "The State Aid for Nonstate Agencies Act of 1987."

Session Laws 1987, c. 830, s. 121 is a severability clause.

**Effect of Amendments.** —

Session Laws 1987, c. 25, s. 2, effective

March 25, 1987, added the last three sentences of subdivision (5).

Session Laws 1987, c. 320, ss. 1-3, effective June 8, 1987, deleted "and the hearing of appeals of applicants, employees, and former employees" following "the investigation of complaints" at the beginning of the first sentence of subdivision (9), deleted a former second sentence of subdivision (9), defining "reinstatement", deleted subdivision (12), relating to the appointment of hearing officers, and deleted subdivision (13), relating to the employment of independent attorneys to represent the Department.

## § 126-5. Employees subject to Chapter; exemptions.

(a) The provisions of this Chapter shall apply to all State employees not herein exempt, to employees of area mental health, mental retardation, substance abuse authorities, and to employees of local social services departments, public health departments, and local emergency management agencies that receive federal grant-in-aid funds; and the provisions of this Chapter may apply to such

other county employees as the several boards of county commissioners may from time to time determine.

(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

- (1) Constitutional officers of the State.
- (2) Officers and employees of the Judicial Department.
- (3) Officers and employees of the General Assembly.
- (4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.
- (5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.
- (6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (8) Instructional and research staff, physicians, and dentists of The University of North Carolina.
- (9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-1(5) [116-11(5)], and 116-14.
- (10) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20.
- (11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).
- (12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g).

(c3) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter, the provisions of this Chapter shall not apply to: Teaching and related educational classes of employees of the Department of Correction, the Department of Human Resources, and any other State department, agency or institution, whose salaries shall be set in the same manner as set for corresponding public school employees in accordance with Chapter 115C of the General Statutes.

(c4) The State Personnel Commission shall establish a position and appointment type for certain field force positions and employees in the Division of Highways, Department of Transportation, where, in the judgement of the Commission, such appointment is for a position that is an entry level occupation, is for a duration of at least one-half of the workdays of each pay period for at least nine calendar months per year, and is reflective of employment practices in competing labor markets. This appointment type shall be for "permanent hourly employees." Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1),



126-4(2), and 126-4(3), and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to permanent hourly employees. The State Personnel Commission regulations shall provide that these employees will be guaranteed two hours show-up pay when work is postponed, and pay for holidays falling within periods of employment.

(1965, c. 640, s. 2; 1967, c. 24, s. 20; cc. 1038, 1143; 1969, c. 982; 1971, c. 1025, s. 2; 1973, c. 476, s. 143; 1975, c. 667, ss. 8, 9; 1977, c. 866, ss. 2-5; 1979, 2nd Sess., c. 1137, s. 40; 1983, c. 717, s. 41; c. 867, s. 2; 1985, c. 589, s. 38; c. 617, s. 1; c. 757, s. 206(c); 1985 (Reg. Sess., 1986), c. 955, s. 43; c. 1014, ss. 41, 235; c. 1022, s. 9; 1987, c. 320, s. 4; c. 395, s. 1; c. 809, s. 1; c. 850, s. 19.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendments, it is not set out.

**Editor's Note.** —

Session Laws 1987, c. 850, which added subdivision (c1)(12), provides in s. 27(a):

"(a) Notwithstanding any other provision of this act, this act shall not be construed as a revenue bill within the meaning of Section 23 of Article II of the Constitution of North Carolina. Any provision of this act contrary to this section is void."

Session Laws 1987, c. 850, s. 27(b) is a severability clause.

**Effect of Amendments.** —

Session Laws 1987, c. 320, s. 4, effective

June 8, 1987, substituted "emergency management agencies" for "civil defense agencies" in subsection (a).

Session Laws 1987, c. 395, s. 1, effective July 1, 1987, substituted "pursuant to G.S. 126-4(5) and the provisions of Article 6 of this Chapter" for "pursuant to G.S. 126-4(4), 126-4(5) and 126-4(6), and except as to the provisions of Articles 6 and 7 of this Chapter" near the beginning of subsection (c3).

Session Laws 1987, c. 809, s. 1, effective October 1, 1987, added subsection (c4).

Session Laws 1987, c. 850, s. 19, effective August 14, 1987, added subdivision (c1)(12).

## OPINIONS OF ATTORNEY GENERAL

**Employment and termination of local health director** are subject to the provisions of Chapter 126, the State Personnel Act, and termination or discharge of a health director must comply with all statutory provisions and regulations duly adopted by the State Personnel Commission pursuant to Chapter 126. See opinion of Attorney General to Mr. Michael S. Kennedy, Esquire, Attorney for Cleveland County Board of Health, and Mr. Robert W. Yelton, Esquire, Attorney for Cleveland County, 55 N.C.A.G. 113 (1986).

**The Departments of Human Resources and Correction determine initially whether a particular position is a teaching or related educational position** within the meaning of subsection (c3). If an employee disputes that decision, he has a right to appeal to the State Personnel Commission and to have the commission resolve the dispute. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, — N.C.A.G. — (Mar. 18, 1987).

**Salaries of Exempt Personnel.** — The Secretary of the Department of Human Resources and the Secretary of the Department of Correction have authority to set the salary schedules for persons employed by their departments in teaching and related educational positions exempt from the State Personnel Act by subsection (c3) of this section. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secretary, Department of Human Resources, — N.C.A.G. — (Mar. 18, 1987).

The salary schedules established by the Department of Human Resources and the Department of Correction for educational personnel exempt from the State Personnel Act must correspond to the salary schedules established by the State Board of Education for public school employees except in cases where the duties of employees do not correspond to the duties of public school employee positions. In such cases the salary schedule should conform as closely as possible to the public school salary

schedules. See opinion of Attorney General to Mr. Phillip J. Kirk, Jr., Secre-

tary, Department of Human Resources, — N.C.A.G. — (Mar. 18, 1987).

## ARTICLE 2.

### *Salaries, Promotions, and Leave of State Employees.*

**Editor's Note.** — Session Laws 1987, c. 689, s. 1 rewrote the title of this Article.

#### § 126-7.1. Posting requirement; State employees receive priority consideration.

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted within at least the following:

- (1) The personnel office of the agency, department, or institution having the vacancy; and
- (2) The particular work unit of the agency, department, or institution having the vacancy

in a location readily accessible to employees. If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee:

- (1) Applies for another position of State employment; and
- (2) Has substantially equal qualifications as an applicant who is not a State employee

then the State employee shall receive priority consideration over the applicant who is not a State employee.

(d) "Qualifications" within the meaning of subsection (c) of this section shall consist of:

- (1) Training or education;
- (2) Years of experience; and
- (3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for. (1987, c. 689, s. 2.)

**Editor's Note.** — Session Laws 1987, c. 689, s. 5 makes this section effective October 1, 1987.

Session Laws 1987, c. 689, s. 4 provides:  
"The State Personnel Director shall

present a report to the 1989 General Assembly, no later than March 1, 1989, containing the following:

"(a) An assessment of the impact of this act on employing agencies and current State employees seeking promotional opportunities;

"(b) An assessment of the ability of

State agencies to recruit and hire outside applicants for State government employment; and

"(c) An assessment of the appeals process set forth in G.S. 126-36.2, including the number of appeals filed as a result of this act."

## ARTICLE 5.

### *Political Activity of Employees.*

#### § 126-13. Appropriate political activity of State employees defined.

##### OPINIONS OF ATTORNEY GENERAL

**Probation and parole officer may file notice of candidacy and campaign for election** to the office of sheriff assuming that no federal funds are involved with respect to the probation and parole officer's employment and,

thus, that proscriptions contained in the federal Hatch Act do not apply. See opinion of Attorney General to Sheriff Ralph L. Thomas, Carteret County, 55 N.C.A.G. 35 (1985).

#### § 126-15.1. Probationary State employee defined.

As used in this Article, "probationary State employee" means a State employee who is exempt from the Personnel Act only because he has not been continuously employed by the State for the period required by G.S. 126-5(c). (1985, c. 469, s. 4; 1987, c. 282, s. 19.)

**Effect of Amendments.** — The 1987 amendment, effective June 4, 1987, substituted "G.S. 126-5(c)" for "G.S. 126-5(d)."

## ARTICLE 7.

### *The Privacy of State Employee Personnel Records.*

#### § 126-29. Access to material in file for agency hearing.

A party to a quasi-judicial hearing of a State agency subject to Article 7 of this Chapter, or a State agency subject to Article 7 of this Chapter which is conducting a quasi-judicial hearing, may have access to relevant material in personnel files and may introduce copies of such material or information based on such material as evidence in the hearing either upon consent of the employee, former employee, or applicant for employment or upon subpoena properly issued by the agency either upon request of a party or on its own motion. Nothing in this Article shall impose liability on any agent or officer of the State for compliance with this provision, notwithstanding any other provision of this Article. (1977, c. 866, s. 12; 1987, c. 320, s. 5.)



**Effect of Amendments.** — The 1987 amendment, effective June 8, 1987, added the last sentence.

### **§ 126-30. Fraudulent disclosure and willful nondisclosure on application for State employment; penalties.**

(a) Any employee who knowingly and willfully discloses false or misleading information, or conceals dishonorable military service; or conceals prior employment history or other requested information, either of which are significantly related to job responsibilities on an application for State employment may be subjected to disciplinary action up to and including immediate dismissal from employment. Dismissal shall be mandatory where the applicant discloses false or misleading information in order to meet position qualifications. Application forms for State employment shall include a statement informing applicants of the consequences of such fraudulent disclosure or lack of disclosure.

(b) The employing authority within each department, university, board, or commission, shall verify the status of credentials and the accuracy of statements contained in the application of each new employee within 90 days from the date of the employees employment. Failure to verify the application shall not bar action under subsection (a) above.

(c) The State Personnel Commission shall issue rules and procedures to implement this section for all departments, agencies and institutions which are not exempted from the State Personnel Act under G.S. 126-5(c1). Each agency, department and institution which is exempted under G.S. 126-5(c1) shall issue regulations to implement this section pursuant to the rulemaking procedures applicable to it. (1987, c. 666, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 666, s. 2 makes this section effective January 1, 1988.

**§§ 126-31 to 126-33:** Reserved for future codification purposes.

## **ARTICLE 8.**

### ***Employee Appeals of Grievances and Disciplinary Action.***

### **§ 126-34. Grievance appeal for State employees.**

Any permanent State employee having a grievance arising out of or due to his employment and who does not allege discrimination because of his age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall first discuss his problem or grievance with his supervisor and follow the grievance procedure established by his department or agency. (1975, c. 667, s. 10; 1987, c. 320, s. 6.)

**Effect of Amendments.** — The 1987 amendment, effective June 8, 1987, substituted "handicapping condition as de-

fined in G.S. 168A-3" for "physical disability."

## § 126-36. Appeal of unlawful State employment practice.

Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied him or that demotion, layoff or termination of employment was forced upon him in retaliation for opposition to alleged discrimination or because of his age, sex, race, color, national origin, religion, creed, political affiliation, or handicapped [handicapping] condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the State Personnel Commission. (1975, c. 667, s. 10; 1977, c. 866, ss. 13, 16; 1987, c. 320, s. 7.)

**Editor's Note.** — Section 168A-3, referred to above, does not define the term "handicapped condition," but does define "handicapped person" and "handicapping condition."

**Effect of Amendments.** — The 1987 amendment, effective June 8, 1987, substituted "handicapped condition as defined in G.S. 168A-3" for "physical disability."

### § 126-36.2. Appeal to Personnel Commission by State employee denied notice of vacancy or priority consideration.

Any State employee who has reason to believe that he was denied promotion due to the failure of the agency, department, or institution that had a job vacancy to:

- (1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;
- (2) Give him priority consideration pursuant to G.S. 126-7.1(c) may appeal directly to the State Personnel Commission. (1987, c. 689, s. 3.)

**Editor's Note.** — Session Laws 1987, c. 689, s. 5 makes this section effective October 1, 1987.

Session Laws 1987, c. 689, s. 4 provides:

"The State Personnel Director shall present a report to the 1989 General Assembly, no later than March 1, 1989, containing the following:

- "(a) An assessment of the impact of this act on employing agencies and current State employees

seeking promotional opportunities;

- "(b) An assessment of the ability of State agencies to recruit and hire outside applicants for State government employment; and

- "(c) An assessment of the appeals process set forth in G.S. 126-36.2, including the number of appeals filed as a result of this act."

**§ 126-37. Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding decision.**

(a) The State Personnel Director or any other person or persons designated by the Commission shall investigate the disciplinary action or alleged discrimination which is appealed to the Commission. Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority.

(b) An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial de novo. In such an action brought by a local employee under this section, the defendant shall be the local appointing authority. If superior court affirms the decision of the Commission, the decision of superior court shall be binding on the local appointing authority.

(c) If the local appointing authority is other than a board of county commissioners, the employee must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the filing of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene. (1975, c. 667, s. 10; 1981, c. 680, s. 1; 1985, c. 746, s. 15; 1985 (Reg. Sess., 1986), c. 1022, s. 10; 1987, c. 394.)



**Effect of Amendments. —**

The 1987 amendment, effective June 17, 1987, and applicable to all pending proceedings, provided that local employees shall have 60 days from the effective date to give notice to the county

as provided in subsection (c) of this section, designated the first and second paragraphs as subsections (a) and (b), respectively, added the last two sentences of subsection (b), and added subsection (c).

**CASE NOTES**

**County Board of Social Services Is Not "Local Appointing Authority".**

— The sole involvement of the county board of social services in personnel matters is to select the county director of social services. And the director derives his authority to appoint personnel di-

rectly from the General Assembly, not from the board. Thus the local board does not become the "local appointing authority" pursuant to this section in the absence of a permanent full-time director. In re Brunswick County, 81 N.C. App. 391, 344 S.E.2d 584 (1986).

**§ 126-39. State employee defined.**

For the purposes of this Article, except for positions subject to competitive service and except for appeals brought under G.S. 126-16 and 126-25, the terms "permanent State employee," "permanent employee," "State employee" or "former State employee" as used in this Article shall mean a person

- (1) in a grade 60 or lower position who has been continuously employed by the State of North Carolina for the immediate 12 preceding months;
- (2) in a grade 61 to grade 65 position who has been continuously employed by the State of North Carolina for the immediate 36 preceding months;
- (3) in a grade 66 to grade 70 position who has been continuously employed by the State of North Carolina for the immediate 48 preceding months; or
- (4) in a grade 71 or higher position who has been continuously employed by the State of North Carolina for the immediate 60 preceding months

at the time of the act, grievance, or employment practice complained of. (1977, c. 866, s. 15; 1985, c. 617, s. 4; 1987, c. 320, s. 8.)

**Effect of Amendments. —**

The 1987 amendment, effective June 8, 1987, deleted "not" preceding "been

continuously employed" in subdivisions (1) through (4).

**§ 126-41. Attorney and witness fees.**

The decision of the Commission assessing or refusing to assess reasonable witness fees or a reasonable attorney's fee as provided in G.S. 126-4(11) is a final agency decision appealable under Article 4 of Chapter 150B of the General Statutes. The reviewing court may reverse or modify the decision of the Commission if the decision is unreasonable or the award is inadequate. The reviewing court shall award court costs and a reasonable attorney's fee for representation in connection with the appeal to an employee who obtains a reversal or modification of the Commission's decision in an appeal under this section. (1985, c. 717; 1987, c. 827, ss. 1, 56.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, deleted “In addition to the grounds set out in G.S. 150A-51” at the beginning of the second sentence.

The 1987 amendment by c. 827, s. 1 substituted reference to Chapter 150B for reference to Chapter 150A in this section.

## ARTICLE 9.

### *The Administrative Procedure Act and Modifications.*

**§§ 126-43, 126-44:** Repealed by Session Laws 1987, c. 320, s. 9, effective June 8, 1987.

## ARTICLE 12.

### *Work Options Program for State Employees.*

#### **§ 126-78. Administration.**

The State Personnel Commission and any State division, department, agency, instrumentality or authority participating in the State Work Options Program shall promulgate rules necessary for the administration of the program. (1981, c. 917, s. 1; 1987, c. 827, s. 57.)

**Effect of Amendments.** — The 1987 amendment, effective August 13, 1987, deleted “pursuant to Chapter 150A, ‘the

Administrative Procedures Act’” at the end of the section.

## Chapter 127A.

### Militia.

#### Article 3.

#### National Guard.

#### Sec.

127A-194. Eligibility.

#### Sec.

127A-50.1. Military judges.

#### Article 15.

#### North Carolina National Guard Tuition Assistance Act of 1975.

127A-192. Definitions.

### ARTICLE 3.

#### *National Guard.*

### § 127A-50.1. Military judges.

The Adjutant General shall appoint military judges to preside over courts-martial of the National Guard not in federal service. Minimum requirements for appointment as a military judge shall be:

- (1) Licensed to practice law in this State or certified as a military judge by the Judge Advocate General of the Army, Air Force, Navy, or Marines;
- (2) Designation as a judge advocate by The Judge Advocate General of the Army, Navy, Air Force, or Marines; and
- (3) Membership in the North Carolina National Guard, the National Guard of another state, or the active or reserve components of any of the military services. (1987, c. 649, s. 1.)

**Editor's Note.** — Session Laws 1987, c. 649, s. 2 makes this section effective upon ratification. The act was ratified July 21, 1987.

### ARTICLE 15.

#### *North Carolina National Guard Tuition Assistance Act of 1975.*

### § 127A-192. Definitions.

(d) "State Educational Institutions". — Any of the constituent institutions of the University of North Carolina, or any community college operated under the provisions of Chapter 115D of the General Statutes of North Carolina.

(1975, c. 917, s. 4; 1977, c. 70, s. 2; c. 228, s. 1; 1987, c. 564, s. 24.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective July 6, 1987, substituted "community college operated

under the provisions of Chapter 115D" for "community college or technical institute operated under the provision of Chapter 115A or Article 3 of Chapter 116" in subsection (d).



**§ 127A-194. Eligibility.**

(b) This tuition assistance benefit shall be applicable to students in the following categories:

- (1) Students seeking to achieve completion of their secondary school education at a community college [or technical institute].
- (2) Students seeking trade or vocational training or education.
- (3) Students seeking to achieve a two-year associate degree.
- (4) Students seeking to achieve a four-year baccalaureate degree.
- (5) Students seeking to achieve a graduate degree. (1975, c. 917, s. 6; 1977, c. 228, ss. 3, 4.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Session Laws 1987, c. 564, s. 12, effective July 6, 1987, directed that "community college" be substituted for "community college or tech-

nical institute" in subdivision (b)(1) of § 127-194. At the direction of the Revisor of Statutes, the phrase "or technical institute" has been placed in brackets at the end of subdivision (b)(1) of this section, which was apparently the section intended to be amended by the 1987 act.

## Chapter 127B. Military Affairs.

### ARTICLE 1.

#### *Military Property Sales Facilities.*

#### § 127B-1. Military property sales facility defined.

##### OPINIONS OF ATTORNEY GENERAL

**Purpose of this Article** appears to be to discourage theft of property from the State and federal armed forces by the establishment of a record both of all military property sold and of the identity of the persons selling it by means of licensure of military property sales facilities. See opinion of Attorney General to the Honorable William N. Martin, 55 N.C.A.G. 31 (1985).

**Direct Purchase from Government Requires No License.** — If a person, firm or corporation deals only in military property purchased directly from

the United States government or this State pursuant to written contract, then that person, firm or corporation is not required to be licensed by this Article. However, the items purchased, if they are indeed "military property" within the meaning of § 127B-2, would nevertheless be subject to recording and reporting requirements by military property sales facilities which might later purchase them. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

#### § 127B-2. Military property defined.

##### OPINIONS OF ATTORNEY GENERAL

**Item manufactured for commercial sale, such as camouflage clothing, are not "military property"** within the meaning of this section. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

**Property such as a desk, which is of a type and kind issued for use in or furnished and intended for the military service of the United States or the militia of this State, is nonetheless not "military property"** within the meaning of this Article if it was not originally manufactured for the United States or this State. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

**Article is not intended to cover sales and purchases of obsolete military property.** See opinion of Attorney General to the Honorable William N. Martin, 55 N.C.A.G. 31 (1985).

The term "military property," as de-

fined in this Article, does not include property originally manufactured for use by the United States military or the North Carolina militia, but which is of a type and kind no longer issued for use in or furnished to the personnel of such military services. See opinion of Attorney General to the Honorable William N. Martin, 55 N.C.A.G. 31 (1985).

**Recording and Reporting Requirements.** — If a person, firm or corporation deals only in military property purchased directly from the United States government or this State pursuant to written contract, then that person, firm or corporation is not required to be licensed by this Article. However, the items purchased, if they are indeed "military property" within the meaning of this section, would nevertheless be subject to recording and reporting requirements by military property sales facilities which might later purchase them. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow

County Board of Commissioners, 55 N.C.A.G. 42 (1985).

### § 127B-3. License.

#### OPINIONS OF ATTORNEY GENERAL

**Sales facility need not get separate license from both county and city.** If the facility is in a city or town, it can obtain the license from the city or town government. If it is not in a city or town, then it must obtain the license from the county. See opinion of Attorney General to Mr. Paul M. Starzynski, Member,

Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

**County may charge fee for issuing licenses.** See opinion of Attorney General to Mr. Garriss N. Yarborough, Cumberland County Attorney, 55 N.C.A.G. 41 (1985).

### § 127B-4. Local governing authorities to grant and control license; bond.

#### OPINIONS OF ATTORNEY GENERAL

**Facility May Purchase Property at Another Facility.** — Subsection (a) does not prohibit a military property sales facility from purchasing military property at the place of business of another military property sales facility. However, the purchasing facility would

have to make a record of the transaction in compliance with § 127B-6(a). See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

### § 127B-6. Records to be kept.

#### OPINIONS OF ATTORNEY GENERAL

**Orders shipped to facility from out of state must be recorded and reported** in compliance with paragraphs (a) and (c), just as other transactions by mail must be. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

**Purchase at Another Facility Recorded.** — Section 127B-4(a) does not prohibit a military property sales facility from purchasing military property at the place of business of another military property sales facility. However, the purchasing facility would have to make a record of the transaction in compliance with paragraph (a). See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

**If military property sales facility purchases items by lot,** for example 100 pounds of wool scrap, each scrap need not be listed separately. However, each of the items of scrap should be tagged so that their origin in that lot is discernable. Moreover, where the property has a model number, serial number and/or manufacturer's name, that information must be recorded. See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).

**Record-keeping book called for by paragraph (a) may be loose-leaf.** See opinion of Attorney General to Mr. Paul M. Starzynski, Member, Onslow County Board of Commissioners, 55 N.C.A.G. 42 (1985).



## Chapter 128.

### Offices and Public Officers.

<b>Article 1.</b>	<b>Sec.</b>
<b>General Provisions.</b>	128-26. (See note) Allowance for service.
<b>Sec.</b>	128-27. Benefits.
128-1.1. Dual-office holding allowed.	128-28. Administration and responsibility for operation of System.
<b>Article 3.</b>	128-38.1. (See editor's note for effective date) Termination or partial termination; discontinuance of contributions.
<b>Retirement System for Counties, Cities and Towns.</b>	
128-24. Membership.	

## ARTICLE 1.

### *General Provisions.*

#### § 128-1.1. Dual-office holding allowed.

(c) Any person who holds an office or position in the federal postal system or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs is hereby authorized to hold concurrently therewith one position in State or local government. (1971, c. 697, s. 2; 1975, c. 174; 1987, c. 427, s. 10.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Effect of Amendments.** — The 1987 amendment, effective June 19, 1987, in-

serted "or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs" in subsection (c).

## OPINIONS OF ATTORNEY GENERAL

**Person holding appointive office as police officer can hold position as elected officer** in either State or local government, including as a school board

member. See opinion of Attorney General to Captain Bobby Kilgore, Monroe Public Safety Department, 55 N.C.A.G. 34 (1985).

#### § 128-7. Officer to hold until successor qualified.

**Editor's Note.** — Session Laws 1987, c. 738, s. 29(g) purported to add a subdivision (e)(6) to this section, effective January 1, 1988. However, this section

does not contain a subsection (e). It would appear that the amendment may have been intended to affect § 128-27.

## § 128-10. Citizen to recover funds of county or town retained by delinquent official.

### CASE NOTES

An action by citizens and taxpayers to recover monetary damages from a State officer for misuse of State property while in office is not recognized and may not be maintained. *Flaherty v. Hunt*, 82 N.C. App. 112, 345 S.E.2d 426, cert. denied, 318 N.C. 505, 349 S.E.2d 859 (1986).

### ARTICLE 3.

#### *Retirement System for Counties, Cities and Towns.*

## § 128-21. Definitions.

**Local Modification.** — (As to Article 3) City of Charlotte: 1987, c. 506; city of High Point: 1987, c. 327.

## § 128-24. Membership.

The membership of this Retirement System shall be composed as follows:

- (1) All employees entering or reentering the service of a participating employer after the date of participation in the Retirement System of the employer. On and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act in the employ of a county participating in the Local Governmental Employees' Retirement System are hereby excluded from participation in the Teachers' and State Employees' Retirement System to the extent of that part of their compensation derived from a county; provided that on and after July 1, 1965, new extension service employees excluded from coverage under Title II of the Social Security Act who are required to accept a federal Civil Service appointment may elect in writing on a form acceptable to the Retirement System, to be excluded from the Teachers' and State Employees' Retirement System and the local Retirement System. At such time as Cooperative Agricultural Extension Service Employees excluded from coverage under Title II of the Social Security Act become covered by Title II of the Social Security Act, such employees shall no longer be covered by the provisions of this section, provided no accrued rights of these employees under this section prior to coverage by Title II of the Social Security Act shall be diminished.
- (5) The provisions of this subdivision (5) shall apply to any member whose membership is terminated on or after July 1, 1965, and who becomes entitled to benefits hereunder in accordance with the provisions hereof.
  - a. Notwithstanding any other provision of this Chapter, any member who separates from service prior to the

attainment of the age of 60 years for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 15 or more years of creditable service, and who leaves his total accumulated contributions in said System shall have the right to retire on a deferred retirement allowance upon attaining the age of 60 years; provided that such member may retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; and further provided that in the case of a member who so separates from service on or after July 1, 1967, the aforestated requirement of 15 or more years of creditable service shall be reduced to 12 or more years of creditable service; and further provided that in the case of a member who so separates from service on or after July 1, 1971, or whose account is active on July 1, 1971, the aforestated requirement of 12 or more years of creditable service shall be reduced to five or more years of creditable service. Such deferred retirement allowance shall be computed in accordance with the provisions of G.S. 128-27(b1), provided that such benefits will be computed in accordance with subsection (b2) on or after July 1, 1967, but prior to July 1, 1969; and provided further that such benefits will be computed in accordance with subsection (b3) on or after July 1, 1969.

- b. In lieu of the benefits provided in paragraph a of this subdivision, any member who separates from service prior to the attainment of the age of 60 years, for any reason other than death or retirement for disability as provided in G.S. 128-27(c), after completing 20 or more years of creditable service, and who leaves his total accumulated contributions in said System may elect to retire on an early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided that such member may so retire only upon written application to the Board of Trustees setting forth at what time, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Such early retirement allowance so elected shall be equal to the deferred retirement allowance otherwise payable at the attainment of the age of 60 years reduced by the percentage thereof indicated below.

<i>Age at Retirement</i>	<i>Percentage Reduction</i>
59	7
58	14
57	20
56	25
55	30
54	35
53	39
52	43



<i>Age at Retirement</i>	<i>Percentage Reduction</i>
51	46
50	50

- b1. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 50 years, for any reason other than death or disability as provided in this Article, after completing 15 or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System, may elect to retire on a deferred early retirement allowance upon attaining the age of 50 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred early retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- b2. In lieu of the benefits provided in paragraphs a and b of this subdivision, any member who is a law enforcement officer at the time of separation from service prior to the attainment of the age of 55 years, for any reason other than death or disability as provided in this Article, after completing five or more years of creditable service in this capacity immediately prior to separation from service, and who leaves his total accumulated contributions in this System may elect to retire on a deferred service retirement allowance upon attaining the age of 55 years or at any time thereafter; provided, that the member may commence retirement only upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to commence retirement. The deferred service retirement allowance shall be computed in accordance with the service retirement provisions of this Article pertaining to law enforcement officers.
- c. Should a beneficiary who retired on an early or service retirement allowance be reemployed by an employer participating in the Retirement System on a permanent full-time, part-time, temporary, or on fee-for-service basis, whether contractual or otherwise, the retirement allowance shall be suspended if the beneficiary receives or earns any of the following:
  1. Salary or fees or both in excess of one thousand five hundred dollars (\$1,500) per month;
  2. Salary or fees or both in excess of thirteen thousand five hundred dollars (\$13,500) during any consecutive 12 calendar months;

3. Salary or fees or both during any consecutive 12 calendar months, which is greater than fifty percent (50%) of the reported compensation during the 12 months of service preceding the effective date of retirement; or
4. Salary or fees or both during any month, which when added to the retirement allowance at retirement exceeds the monthly compensation earned immediately prior to retirement, if reemployed by the same employer within 90 days of the effective date of retirement.

The suspension of the retirement allowance shall be effective as of the first day of the month in which the beneficiary meets the conditions set forth in conditions 1 or 4 of this paragraph and effective as of the first day of the next succeeding month following the month in which the beneficiary meets the conditions set forth in conditions 2 or 3 of this paragraph. The retirement allowance shall be reinstated the month following termination of reemployment or the month following the month in which the conditions set forth in this paragraph are no longer met. The Board of Trustees may adjust the monetary limits in this paragraph by an amount equivalent to any across-the-board salary increase granted to employees of the State by the General Assembly. Each employer shall report information monthly to the Board of Trustees on forms provided by the Board on each reemployed beneficiary sufficient for the effective enforcement of this paragraph. Notwithstanding the foregoing, any beneficiary may irrevocably elect to recommence membership in the Retirement System immediately upon being restored to service, whereupon the retirement allowance shall cease.

- d. A beneficiary whose retirement allowance is suspended in accordance with the provisions of paragraph c and who is restored to service shall become a member of the Retirement System and shall contribute thereafter as allowed by law at the uniform contribution payable by all members.

Upon his subsequent retirement, he shall be paid a retirement allowance determined as follows:

1. For a member who earns at least three years' membership service after restoration to service, the retirement allowance shall be computed on the basis of his compensation and service before and after the period of prior retirement without restriction; provided, that if the prior allowance was based on a social security leveling payment option, the allowance shall be adjusted actuarially for the difference between the amount received under the optional payment and what would have been paid if the retirement allowance had been paid without optional modification.
2. For a member who does not earn three years' membership service after restoration to service, the re-

tirement allowance shall be equal to the sum of the retirement allowance to which he would have been entitled had he not been restored to service, without modification of the election of an optional allowance previously made, and the retirement allowance that results from service earned since being restored to service; provided, that if the prior retirement allowance was based on a social security leveling payment option, the prior allowance shall be adjusted actuarially for the difference between the amount that would have been paid for each month had the payment not been suspended and what would have been paid if the retirement allowance had been paid without optional modification.

(1939, c. 390, s. 4; 1941, c. 357, s. 3; 1949, cc. 1011, 1013; 1951, c. 274, s. 2; 1955, c. 1153, s. 2; 1957, c. 854; 1959, c. 491, s. 4; 1961, c. 515, s. 1; 1965, c. 781; 1967, c. 978, ss. 1, 2; 1969, c. 442, ss. 1-5, 7; c. 982; 1971, c. 325, ss. 6-8; c. 326, ss. 1, 2; 1973, c. 243, s. 1; 1977, c. 783, s. 2; 1981, c. 979, s. 2; 1981 (Reg. Sess., 1982), c. 1396, ss. 1, 2; 1983, c. 556, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1106, ss. 1, 2; 1985, c. 479, s. 196(d)-(g); c. 649, s. 2; 1987, c. 513, s. 1; c. 738, s. 38(a).)

**Editor's Note.** — Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments.** — Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 days nor more

than 90 days" in paragraphs (5)a, (5)b, (5)b1, and (5)b2.

Session Laws 1987, c. 738, s. 38(a), effective July 1, 1987, inserted "excluded from coverage under Title II of the Social Security Act" in two places in the second sentence of subdivision (1) and added the last sentence of that subdivision.

## § 128-26. (See note) Allowance for service.

(a) Each person who becomes a member during the first year of his employer's participation, and who was an employee of the same employer at any time during the year immediately preceding the date of participation, shall file a detailed statement of all service rendered by him to that employer prior to the date of participation for which he claims credit.

A participating employer may allow prior service credit to any of its employees on account of: their earlier service to the aforesaid employer; or, their earlier service to any other employer as the term employer is defined in G.S. 128-21(11); or, their earlier service to any state, territory, or other governmental subdivision of the United States other than this State.

A participating employer may allow prior service credit to any of its employees on account of service, as defined in G.S. 135-1(23), to the State of North Carolina to the extent of such service prior to the establishment of the Teachers' and State Employees' Retirement System on July 1, 1941; provided that employees allowed such prior service credit pay in a total lump sum an amount calculated on the basis of compensation the employee earned when he first entered membership and the employee contribution rate at that time to-



gether with interest thereon from year of first membership to year of payment shall be one half of the calculated cost.

With respect to a member retiring on or after July 1, 1967, the governing board of a participating unit may allow credit for any period of military service in the armed forces of the United States if the person returned to the service of his employer within two years after having been honorably discharged, or becoming entitled to be discharged, released, or separated from such armed services; provided that, notwithstanding the above provisions, any member having credit for not less than 10 years of otherwise creditable service may be allowed credit for such military services which are not creditable in any other governmental retirement system; provided further, that a member will receive credit for military service under the provisions of this paragraph only if he submits satisfactory evidence of the military service claimed and the participating unit of which he is an employee agrees to grant credit for such military service prior to January 1, 1972.

A member retiring on or after July 1, 1971, who is not granted credit for military service under the provisions of the preceding paragraph will be allowed credit for any period in the armed services of the United States up to the date he was first eligible to be separated or released therefrom; provided that he was an employee as defined in G.S. 128-21(10) at the time he entered military service, and either of the following conditions is met:

- (1) He returns to service, with the employer by whom he was employed when he entered military service, within a period of two years after he is first eligible to be separated or released from such military service under other than dishonorable conditions.
- (2) He is in service, with the employer by whom he was employed when he entered military service, for a period of not less than 10 years after he is separated or released from such armed services under other than dishonorable conditions.

(i) Notwithstanding any other provision of this Chapter, any person who withdrew his contributions in accordance with the provisions of G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of 10 years of prior and current membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover one half of the cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s), provided that he left service prior to July 1, 1975. Any person who leaves service after June 30, 1975, and who withdraws his contributions in accordance with G.S. 128-27(f) or 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service may, upon completion of 10 years of prior and current membership service, repay in a total lump sum any and all of the accumulated contributions previously withdrawn with sufficient interest added thereto to cover the full cost of providing such additional credit plus a fee to cover expense of handling which shall be determined by the Board of Trustees and receive credit for the service forfeited at time of withdrawal(s).

These provisions shall apply equally to retired members who had attained 10 years of prior and current membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made.

(j) Repealed by Session Laws 1987, c. 617, s. 3, effective January 1, 1988.

(n) Notwithstanding any other provision of this Chapter, any person who withdrew his contribution in accordance with the provisions of G.S. 128-27(f), or G.S. 135-5(f) or the rules and regulations of the Law Enforcement Officers' Retirement System and who subsequently returns to service, may, upon completion of five years of membership service, purchase the withdrawn service by making a lump sum amount to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the system's liabilities; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees.

(o) Credit at Full Cost for Federal Employment. — Notwithstanding any other provisions of this Chapter, a member, upon the completion of 10 years of membership service, may purchase creditable service for periods of federal employment, provided that the member is not receiving any retirement benefits resulting for this federal employment, and provided that the member is not vested in the particular federal retirement system to which the member may have belonged while a federal employee. The member shall purchase this service by making a lump sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the Retirement System; and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Members may also purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government, that are not covered by the provisions of G.S. 128-21(11) or G.S. 135-1(11), under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subdivision shall mean community action, human relations, manpower development, and community development programs as defined in Article 19 and 21 of Chapter 160A and Article 18 of Chapter 153A of the General Statutes and any other similar programs that the Board of Trustees may adopt. (1939, c. 390, s. 6; 1941, c. 357, s. 5; 1943, c. 535; 1945, c. 526, s. 3; 1951, c. 274, s. 3; 1955, c. 1153, s. 3; 1967, c. 978, ss. 11, 12;



1969, c. 442, s. 6; 1971, c. 325, ss. 9-11, 19; 1973, c. 243, s. 2; c. 667, s. 1; c. 816, s. 3; c. 1310, ss. 1-4; 1975, c. 205, s. 1; c. 485, ss. 1-3; 1977, c. 973; 1979, c. 866, s. 1; c. 868, ss. 1, 2; c. 1059, s. 1; 1981, c. 557, s. 3; 1981 (Reg. Sess., 1982), c. 1283, s. 1; c. 1396, s. 3; 1983, c. 533, s. 2; 1983 (Reg. Sess., 1984), c. 1034, s. 231; 1985, c. 407, s. 1; c. 479, s. 196(h); c. 649, ss. 1, 4; 1987, c. 533, s. 2; c. 617, ss. 1-4; c. 717, s. 1.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendments, it is not set out.

**Editor's Note.** — Session Laws 1987, c. 617, s. 3 directs the deletion of the last paragraph of subsection (j). However, subsection (j) only contained one paragraph. Thus it would appear that the intent of the act was to delete all of subsection (j).

Session Laws 1987, c. 617, s. 5 provides, *inter alia*: "For the purposes of Section 3 of this act, members of the Retirement System who are members before January 1, 1988, shall retain all rights and privileges to purchase military and out-of-state service credits under the same conditions that existed prior to the effective date of that section."

**Effect of Amendments.** — Session Laws 1987, c. 533, s. 2, effective July 1, 1987, added subsection (n).

Session Laws 1987, c. 617, ss. 1, 2 and 4, effective July 1, 1987, deleted the last sentence of the last paragraph of subsection (a), which read "The provisions of this paragraph shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System"; deleted the last sentences of subsections (i) and (j), which read "The provisions of this subsection shall become effective for any employer only after an agreement to that effect has been executed by the employer and the Director of the Retirement System"; and substituted "10 years of prior and current membership service" for references to 10 years of membership service and 10 years of current membership service throughout subsections (a), (i) and (j).

Session Laws 1987, c. 617, s. 3, effective January 1, 1988, deleted the last paragraph of subsection (a), which, as amended by c. 617, ss. 1 and 4, read:

"Notwithstanding any other provision of this Chapter, members not otherwise allowed service credit for service in the armed forces of the United States may, upon completion of 10 years of prior and current membership service, purchase

such service credit by paying in a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time, with sufficient interest added thereto so as to equal one half the cost of allowing such service, plus a fee to cover expense of handling payment to be determined by the Board of Trustees and assessed the member at the time of payment; provided that credit will be allowed only for the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom; and further provided that the member submit satisfactory evidence of the service claimed and that service credit be allowed only for that period of active service in the armed forces of the United States not creditable in any other retirement system, except the national guard or any reserve component of the armed forces of the United States. These provisions shall apply equally to retired members who had attained 10 years of prior and current membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of a member is made."

Session Laws 1987, c. 617, s. 3, effective January 1, 1988, also deleted subsection (j), which, as amended by c. 617, ss. 2 and 4, read:

"(j) Notwithstanding any other provision of this Chapter, any member may, upon completion of 10 years of prior and current membership service, purchase credit for service previously rendered to any state, territory or other governmental subdivision of the United States other than this State at the rate of one year of out-of-state service for each two years of service in this State with a max-



imum allowable of 10 years of out-of-state service. Such service is limited to full-time service which would be allowable under the laws governing this System. Credit will be allowed only if no benefit is allowable in another public retirement system as the result of the service. Payment shall be permitted only on a total lump sum an amount, based on the compensation the member earned when he first entered membership and the employee contribution rate at that time and shall be equal to the full cost of providing credit for such service plus a fee to cover expense of handling which

shall be determined by the Board of Trustees. These provisions shall apply equally to retired members who had attained 10 years of prior and current membership service prior to retirement. Cost as used in this subsection shall mean the amount of money required to provide additional retirement benefits based on service credit allowed at the time any adjustment to the service credit of an individual is made."

Session Laws 1987, c. 717, s. 1, effective August 3, 1987, added subsection (o).

## § 128-27. Benefits.

### (a) Service Retirement Benefits. —

- (1) Any member may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired: Provided, that the said member at the time so specified for his retirement shall have attained the age of 60 years and have at least five years of creditable service or shall have completed 30 years of creditable service, or if a fireman, he shall have attained the age of 55 years and have at least five years of creditable service.
- (2) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1019, s. 1.
- (3) Repealed by Session Laws 1971, c. 325, s. 12.
- (4) Any member who was in service October 8, 1981, who had attained 60 years of age, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired.
- (5) Any member who is a law enforcement officer, and who attains age 50 and completes 15 or more years of creditable service in this capacity or who attains age 55 and completes five or more years of creditable service in this capacity, may retire upon written application to the Board of Trustees setting forth at what time, as of the first day of a calendar month, not less than one day nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired; provided, also, any member who has met the conditions required by this subdivision but does not retire, and later becomes an employee other than as a law enforcement officer, continues to have the right to commence retirement.

(c) Disability Retirement Benefits. — Upon the application of a member or of his employer, any member who has had five or more years of creditable service may be retired by the Board of Trustees, on the first day of any calendar month, not less than one day nor more than 90 days next following the date of filing such application,

on a disability retirement allowance: Provided, that the medical board, after a medical examination of such member, shall certify that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that such member should be retired; Provided further the medical board shall determine if the member is able to engage in gainful employment and, if so, the member may still be retired and the disability retirement allowance as a result thereof shall be reduced as in subsection (e) below. Provided further, that the Medical Board shall not certify any member as disabled who:

- (1) Applies for disability retirement based upon a mental or physical incapacity which existed when the member first established membership in the system; or
- (2) Is in receipt of any payments on account of the same disability which existed when the member first established membership in the system.

The Board of Trustees shall require each employee upon enrolling in the retirement system to provide information on the membership application concerning any mental or physical incapacities existing at the time the member enrolls.

Notwithstanding the requirement of five or more years of creditable service to the contrary, a member who is a law enforcement officer and who has had one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, may be retired by the Board of Trustees on a disability retirement allowance.

(12) (Effective July 1, 1988) Death Benefit for Retired Members. — Upon receipt of proof, satisfactory to the Board of Trustees in its capacity under this subsection, of the death of a retired member of the Retirement System on or after July 1, 1988, there shall be paid a death benefit to the surviving spouse of the deceased retired member or to the deceased retired member's legal representative if not survived by a spouse; provided the retired member has elected, when first eligible, to make, and has continuously made, in advance of his death required contributions as determined by the Board of Trustees on a fully contributory basis through retirement allowance deductions or other methods adopted by the Board of Trustees, to a group death benefit trust fund administered by the Board of Trustees separate and apart from the Retirement System's Annuity Savings Fund and Pension Accumulation Fund. This death benefit shall be a lump-sum payment in the amount of five thousand dollars (\$5,000) upon the completion of 24 months of contributions required under this subsection. Should death occur before the completion of 24 months of contributions required under this subsection, the deceased retired member's surviving spouse or legal representative if not survived by a spouse shall be paid the sum of the retired member's contributions required by this subsection plus interest to be determined by the Board of Trustees.

(m) Survivor's Alternate Benefit. — Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Op-



tion two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance or had attained 20 years of creditable service.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as provided in subsection (I) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase.

(cc) From and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1986, shall be increased by four percent (4.0%) of the allowance payable on July 1, 1986, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1987, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1986, but before June 30, 1987, shall be increased by a prorated amount of four percent (4.0%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1986, and June 30, 1987. (1939, c. 390, s. 7; 1945, c. 526, s. 4; 1951, c. 274, ss. 4-6; 1955, c. 1153, ss. 4-6; 1957, c. 855, ss. 1-4; 1959, c. 491, ss. 5-8; 1961, c. 515, ss. 2, 6, 7; 1965, c. 781; 1967, c. 978, ss. 3-7; 1969, c. 442, ss. 7-14; c. 898; 1971, c. 325, ss. 12-16, 19; c. 326, ss. 3-7; 1973, c. 243, ss. 3-7; c. 244, ss. 1-3; c. 816, s. 4; c. 994, ss. 2, 4; c. 1313, ss. 1, 2; 1975, c. 486, ss. 1, 2; c. 621, ss. 1, 2; 1975, 2nd Sess., c. 983, ss. 126-128; 1977, 2nd Sess., c. 1240; 1979, c. 862, ss. 2, 6, 7; c. 974, s. 1; c. 1063, s. 2; 1979, 2nd Sess., c. 1196, s. 2; cc. 1213, 1240; 1981, c. 672, s. 2; c. 689, s. 1; c. 940, s. 1; c. 975, s. 2; c. 978, ss. 3, 4; c. 980, ss. 1, 2; c. 981, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1284, ss. 1, 2; 1983, c. 467; c. 761, ss. 226, 227; 1983 (Reg. Sess., 1984), c. 1019, s. 1; c. 1044; c. 1049, ss. 1-3; c. 1086; 1985, c. 138; c. 348, s. 2; c. 479, s. 196(i)-(n); c. 520, s. 2; c. 649, ss. 8, 10; c. 751, ss. 1-4, 6; c. 791, s. 56; 1985 (Reg. Sess., 1986), c. 1014, s. 49(d); 1987, c. 181, s. 1; c. 513, s. 1; c. 738, ss. 27(c), 37(b); c. 824, s. 2.)

**Only Part of Section Set Out.** — As the rest of the section was not affected by the amendment, it is not set out.

**Editor's Note.** — Session Laws 1987, c. 738, s. 29(g) purported to add a subdivision (e)(6) to § 128-7, effective January 1, 1988. However, § 128-7 does not

contain a subsection (e). It would appear that the amendment by c. 738, s. 29(g) may have been intended to affect subsection (e) of this section. The subdivision which c. 738, s. 29(g) purported to add reads as follows:

"(6) Notwithstanding any other provi-



sion to the contrary, a beneficiary in receipt of a disability retirement allowance until the earliest date on which he would have qualified for an unreduced service retirement allowance shall thereafter (i) not be subject to further reexaminations as to disability, (ii) not be subject to any reduction in allowance on account of being engaged in a gainful occupation other than with an employer participating in the Retirement System, and (iii) be considered a beneficiary in receipt of a service retirement allowance. Provided, however, a beneficiary in receipt of a disability retirement allowance whose allowance is reduced on account of reexamination as to disability or to ability to engage in a gainful occupation prior to the date on which he would have qualified for an unreduced service retirement allowance shall have only the right to elect to convert to an early or service retirement allowance as permitted under subdivision (1) above."

Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The

Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

**Effect of Amendments. —**

Session Laws 1987, c. 181, s. 1, effective January 1, 1987, added the last paragraph of subsection (m).

Session Laws 1987, c. 513, s. 1, effective June 29, 1987, substituted "one day nor more than 90 days" for "30 days nor more than 90 days" in subdivisions (a)(1), (a)(4), and (a)(5), and for "30 and not more than 90 days" near the beginning of subsection (c).

Session Laws 1987, c. 738, s. 27(c), effective July 1, 1987, added subsection (cc).

Session Laws 1987, c. 738, s. 37(b), effective September 1, 1987, substituted "such age" for "the age" and added "or had attained 20 years of creditable service" in subdivision (m)(1).

Session Laws 1987, c. 824, s. 2, effective July 1, 1988, added subsection (12).

## § 128-28. Administration and responsibility for operation of System.

(q) Notwithstanding any law, rule, regulation or policy to the contrary, any board, agency, department, institution or subdivision of the State maintaining lists of names and addresses in the administration of their programs may upon request provide to the Retirement System information limited to social security numbers, current name and addresses of persons identified by the System as members, beneficiaries, and beneficiaries of members of the System. The System shall use such information for the sole purpose of notifying members, beneficiaries, and beneficiaries of members of their rights to and accruals of benefits in the Retirement System. Any social security number, current name and address so obtained and any information concluded therefrom and the source thereof shall be treated as confidential and shall not be divulged by any employee of the Retirement System or of the Department of State Treasurer except as may be necessary to notify the member, beneficiary, or beneficiary of the member of their rights to and accruals of benefits in the Retirement System. Any person, officer, employee or former employee violating this provision shall be guilty of a misdemeanor and fined not less than two hundred dollars (\$200.00) nor more than one thousand (\$1,000) and/or be imprisoned; and if such offending person be a public official or employee, he shall be dismissed from office or employment and shall not hold any public office or employment in this State for a period of five years thereafter. (1939, c. 390, s. 8; 1941, c. 357, s. 6; 1945, c. 526, s. 7; 1961, c. 515, ss. 3, 4; 1965, c. 781; 1969, c. 442, s. 15; 1973, c. 243, s. 8; 1985, c. 479, s. 196(o); 1987, c. 539, s. 1.)

**Effect of Amendments. —**

The 1987 amendment, effective July 3, 1987, added subsection (q).

**§ 128-38.1. (See editor's note for effective date) Termination or partial termination; discontinuance of contributions.**

In the event of the termination or partial termination of the Retirement System or in the event of complete discontinuance of contributions under the Retirement System, the rights of all affected members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the members' accounts, shall be nonforfeitable and fully vested. (1987, c. 177, s. 1(a), (b).)

**Editor's Note.** — Session Laws 1987, c. 177, s. 1(c) makes this section effective upon the first day of the calendar month following the State's receipt of a favorable letter of determination or ruling from the Internal Revenue Service,

United States Department of Treasury, that the Retirement Systems are qualified trusts under Section 401(a) of the Internal Revenue Code of 1954 as amended.

**Chapter 129.**  
**Public Buildings and Grounds.**

**Article 7.**

**North Carolina Capital  
Building Authority.**

Sec.

129-40 to 129-49. [Repealed.]

**ARTICLE 7.**

*North Carolina Capital Building Authority.*

**§§ 129-40 to 129-49:** Repealed by Session Laws 1987, c. 71, s. 2, effective April 14, 1987.

**Cross References.** — As to the State Building Commission, see § 143-135.25 et seq.



STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

*November 1, 1987*

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1987 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG

*Attorney General of North Carolina*

North Carolina State Library  
Raleigh, N. C.

STATE OF NORTH CAROLINA

Department of Justice

Raleigh, North Carolina

November 1, 1937

I, Earl H. Thompson, Attorney General of the State of North Carolina, do hereby certify that the foregoing 1937 Constitution Amendment is the (correct) version of the North Carolina Constitution as presented and published by the Division of Printing and the Department of the State of North Carolina.

Very truly yours,  
Earl H. Thompson,  
Attorney General of North Carolina

Witness my hand and the seal of the Department of Justice at Raleigh, North Carolina, this 1st day of November, 1937.

Notary Public for North Carolina  
My Comm. Expires Nov. 1, 1938  
My Comm. No. 12345





